

COMPREHENSIVE CHILDREN'S PRODUCT SAFETY COMMISSION REFORM LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND
COMMERCE

HOUSE OF REPRESENTATIVES

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COMPREHENSIVE CHILDREN'S PRODUCT SAFETY COMMISSION REFORM LEGISLATION

TUESDAY, NOVEMBER 6, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2123, Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Present: Representatives Schakowsky, Barrow, Markey, DeGette, Gonzalez, Ross, Hooley, Matheson, Dingell, Stearns, Radnovich, Pitts, Burgess, Blackburn, and Barton.

Staff present: Consuela Washington, Christian Fjeld, Judith Bailey, Andrew Woelfling, Valerie Baron, Brian McCullough Shannon Weinberg, Will Carty, and Chad Grant.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee will come to order.

The Chair recognizes himself for 5 minutes of opening statements.

On May 15 of this year, before the numerous high-profile summer recalls of millions of lead-tainted toys, this committee held its first hearing on children's safety and the Consumer Product Safety Commission. At the conclusion of that May hearing, I publicly made a pledge, as chairman of the subcommittee of jurisdiction, to reauthorize the beleaguered Commission by authorizing more resources and reforming the underlying organic statute. I also pledged to do so in a bipartisan manner.

The bill that is the subject of our legislative hearing today is the product of that pledge that I made almost 6 months ago. H.R. 4040, the Consumer Product Safety Modernization Act of 2007, was introduced by Chairman Dingell, Ranking Member Barton, Ranking Member Stearns and myself.

It is a bipartisan piece of legislation that authorizes desperately needed resources to the Commission and dramatically reforms the Consumer Product Safety Act. After decades of neglect, this bill restores the CPSC to its rightful place of prominence and gives it the necessary tools to grapple with the global marketplace and protect American consumers, particularly our children, from dangerous and defective products.

The bill has two titles. Title 1 specifically addresses children's products. It bans lead in toys beyond a trace amount and significantly lowers the antiquated lead paint standard. Moreover, it requires independent, third-party testing for lead in children's products for ages 12 and younger. For products geared toward children 6 and under, the bill requires independent testing for all mandatory standards.

In addition, title 1 incorporates the provisions of H.R. 1699, the Danny Keysar Child Product Safety Notification Act, introduced by the vice chair of the subcommittee, Ms. Jan Schakowsky of Illinois, and further requires a directed rulemaking for mandatory safety standards for 12 specified durable nursery products, thus subjecting those products to the independent, third-party testing requirement.

Title 2 of H.R. 4040 overhauls the CPSC itself. In addition to authorizing significantly more resources, our bipartisan bill restores the agency to its full panel of five commissioners within 3 years. Title 2 also accelerates and strengthens the CPSC's reporting requirements to the public and streamlines its rulemaking process in order to facilitate quick regulatory action.

Title 2 declares a flat prohibition on the sale of recalled products and expedites corrective action plans while maintaining the Commission as the ultimate authority to veto any corporate remedy that is not in the best interest of the consumers.

Moreover, title 2 effectively prohibits the export of defective products from our own country and authorizes the Commission to share and receive information from foreign governments in order to coordinate our global consumer-protection efforts.

Lastly, the bipartisan bill also raises the penalty cap in order to punish wrongdoers who flout the law, a provision that has already passed the full House of Representatives as a stand-alone bill.

I want to emphasize to the members of the subcommittee that this bill represents the beginning of the process—I said the beginning of the process—and not the end. Today's legislative hearing will allow each member of the subcommittee to evaluate the bill's strengths as well as areas for improvements.

Chairman Dingell and I fully intend to move this bill and proceed by regular order from subcommittee to full committee to the floor, in order to give every member of the committee an opportunity to make his or her mark on the final version of the legislative product.

In short, this is a work in progress, and we value the input from all members of the committee.

Having said that, it is my sincere hope that all members and all stakeholders' groups will recognize and respect the bipartisan nature of the bill. It is obvious that we are not all going to agree on every provision that is in or not in this piece of legislation. However, I am convinced that if we all continue to work together in good faith and in full bipartisan cooperation, if both sides strive to compromise and find common ground, we will produce a final legislative package of which we can all be proud.

With that, I want to welcome all of our witnesses who have agreed to appear before us today. Many of them are familiar faces. And I look forward to their testimony and our deliberation.

And I yield back the balance of my time.

The Chair now recognizes the ranking member of the subcommittee, Mr. Stearns, for 5 minutes.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning. And thank you, Mr. Chairman, and thank you for your leadership on this, and Mr. Barton of Texas and Mr. Dingell.

This bill represents what we can do together. It is a strong piece of legislation, and that is why we are here today. I am certain there is, obviously, as you pointed out, some room for improvement, but we can do that in the regular legislative process, which is what we are trying to do here.

We want to receive inputs from all people, comments on the impact of this legislation on stakeholders and those who will have to operate under the new burdens we place on them, including the Consumer Product Safety Commission and the industry. Although we have had input from their staff while we were drafting this legislation, I look forward to their comments after seeing the final bill as it is introduced, and whether they think the provisions that we sort of brought to optimum level, and provided increased language, accurately and efficiently reflect and address the safety issues of concern by all of us.

My colleagues, 6 months ago we sat in this hearing room and began our discussions of children's product safety. The four bills we passed out of this committee have already passed the House. While we agreed to address those specific issues, a piecemeal approach is really just a Band-Aid.

Neither Congress and, more importantly, the Commission is equipped to legislate and mandate rules on every consumer product. This is an impossible and counterproductive exercise. With a few exceptions, H.R. 4040 provides all of the components necessary to improve product safety, and children's product safety in particular, without having to mandate standards on a product-by-product basis.

The bill updates the lead safety standards for paint and effectively bans children's products containing lead. Second, it receives independent testing to make sure that all applicable safety standards are met for children's products. It directs the CPSC to either establish an accreditation process for labs or recognize an accreditation process that provides for lab integrity and standardized testing procedures.

Given the testing requirements many retail organizations and manufacturers have imposed, I have questions how these new mandates will affect those efforts, as well as the efficiency of such a testing requirement.

The Commission has performed admirably in response to the record number of recalls for fiscal year 2007 with its current staff and budget. We are about to ask a lot more of them. Therefore, the bill also authorizes a funding boost for CPSC and additional money for much-needed laboratory upgrade.

The bill also preserves the cooperative spirit with which the Commission and industry work together. This is important. Thou-

sands and thousands of consumer products are launched in the market every year. The Commission absolutely could not perform its duties without industry's voluntary cooperation. We must ensure that companies continue to notify the CPSC in advance of even a potential problem, so that we can catch and remove dangerous products from the market as quick as possible.

We must also ensure that the Commission's resources are spent where they are most effective, in pursuing its mission of product safety, and not in a courtroom.

As I mentioned a moment ago, this bill is a product of excellent bipartisan cooperation, but it also is a product of cooperation with industry, consumer stakeholders and the Commission itself. And that is important.

I wanted to commend the commissioners and their staff for their help in this process.

And I believe Chairwoman Nord's statements regarding the Senate measure have been misconstrued in the media. I have the five-page letter in front of me. And, Mr. Chairman, when you look through, in detail, some of the very careful suggestions she made—whether it was product certification; talking about resources; lead in children's products; information disclosure; relying upon standards; State attorney general parens patriae, in which somebody goes forward to sue on behalf of constituents; all these very abstruse comments; whistleblower protection; penalty cap increase; criminal penalties—all of this is in her letter. So I call the attention of my colleagues to read it in its totality.

Her involvement in this process is evident by her commitment at the Commission and its mission. Through our work with her, we know that she does not take this mission lightly—rather, she takes it very seriously—the matter of ensuring both that the agency receives additional resources and that those resources will be used where they are most necessary and most effective.

So, Mr. Chairman, I reiterate my opening remark. This is a strong bill. And I commend your leadership, and I appreciate your willingness to work with this side of the aisle so that we can have an opportunity to participate and get involved.

And I thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the chairman of the full committee for 5 minutes of opening statements, Mr. Dingell.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I commend you for your vigorous leadership in this matter. I commend you and thank you for this hearing. And I note that it is a valuable hearing on a very important question, H.R. 4040, the Consumer Product Safety Modernization Act.

This is a bipartisan bill which has been worked out carefully by yourself, by the distinguished ranking minority member Mr. Stearns, and by our good friend Mr. Barton, the ranking member of the full committee, and I. And I want to commend you, my dear friends, for your collective efforts in writing this important piece of legislation.

I would point out that this is probably the first major review legislatively of the CPSC since the original legislation was written by our good friend John Moss of California way back and when I had the privilege of working with him to move that legislation forward.

It has been established in the hearing records of this subcommittee that the Consumer Product Safety Commission is hampered both by lack of authority and by lack of resources to address critical and crucial consumer-protection issues faced by our citizens. They also face shortage of funds and, very frankly, a peculiar situation where they are limited to two members by a legislative process that appears to have served the Nation poorly.

I believe that H.R. 4040 will go far to alleviate the problems that we see, as well as to strengthen the CPSC to meet the responsibilities under its jurisdiction, particularly those flowing from globalization of trade and some of the irresponsible trading activities of some of our trading partners.

I want to welcome our witnesses today, and I look forward to their testimony. With the larger goal of protecting consumers and their children in mind, I am interested in the views of our witnesses on both the implementation of H.R. 4040 and how effective its provisions will be in addressing our goals for consumer protection.

I will also be interested in hearing about steps other than these needed to see to it that CPSC can carry forward its high and important responsibilities. In particular, I hope that our witnesses will share their insights in certain areas of H.R. 4040, such as: one, the adequacy of the reauthorization for CPSC and the implications of restoring that agency to a five-member governing body; two, the advantages of permitting CPSC to engage in expedited rulemaking; three, whether the proposed lead standard for products will sufficiently protect children; four, the feasibility and benefits of mandatory third-party testing for certain children's products; and five, any suggestions for means by which the Congress might fund the reforms put forth by this legislation.

And I would observe that one of the problems at CPSC, Food and Drug, and other consumer-protection organizations have had on a continuing basis has been the inadequacy of funding and the inadequacy of the ability of the agencies to draw the necessary resources to enable them to carry out their high statutory responsibilities.

I remain committed to ensuring that the Committee on Energy and Commerce produces a thoughtful, well-intentioned and effective bill that will make crucial improvements to the CPSC and strengthen its ability to protect our Nation's consumers.

I want to observe that we have here before us a bipartisan bill, which is, I think, very important in terms of ensuring enactment of the legislation before us. And I am very hopeful that we will be able to continue on the course on which we have begun in this regard.

I want to thank my witnesses, and I want to thank my colleagues who have contributed to the development of H.R. 4040.

And I want to particularly commend you, Mr. Chairman, as I look forward to its expeditious passage in this legislation this year under your leadership.

I thank you, and I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Texas, Mr. Burgess.

**OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BURGESS. Thank you, Mr. Chairman. I want to thank you and Ranking Member Stearns and commend you both for holding the hearing today and for the bipartisan nature in the way our subcommittee has worked on this legislation that is before us today.

Mr. Chairman, you have heard me say before this committee has some of the brightest minds, some of the greatest amount of intellectual firepower in the United States Congress, on both sides of the dais. When this committee acts in a true bipartisan spirit, we are able to write meaningful legislation that will have a significant impact and a positive impact on the country, not just today but in the decades to come.

Under the leadership of this committee, we have been able to pass effective bipartisan bills, such as the Melanie Stokes Postpartum Depression Act, and now hopefully we will have a similar result with the legislation before us today.

Mr. Chairman, I want to be very clear, I have no quarrel with the leadership of this committee, either at the subcommittee or full committee level. But, unfortunately, the leadership of the House of Representatives has been trying to run the show in the Energy and Commerce Committee, and that is wrong. As we all know, the system works best and we have the most effective legislation when bills are allowed to follow the regular committee process. And then we all saw what happened on the State Children's Health Insurance Program. It was not allowed to go through the normal process, and as a consequence, the issue of children's health care was turned into a partisan game. We focused on a year from now, rather than a near-term, mid-term and long-term strategy, and everyone lost. And, most tragically, America's children lost in that exchange. And now all the queen's horses and all the queen's men are trying to put Humpty Dumpty back together again. And, quite frankly, the process has become unnecessarily messy.

Mr. Chairman, I understand that while leadership wanted to rush this essential piece of legislation through, we have the commitment of you and this committee to hold both a subcommittee and full committee markup. And I thank you for that. I also understand that you are welcoming members' amendments, and I thank you for your commitment to this process and making this good bill an even better bill. I am an original cosponsor of the bill, and I look forward to working with you on some of the amendments affecting recalls and nonprofits.

I would also like to thank Chairwoman Nord for coming here today. I know it is not easy.

Ms. Nord, you and your staff have provided crucial technical assistance and constructive criticism to this legislation, and I thank you for your honesty. Because you are not afraid to speak your mind about your agency's needs, we have been able to craft legisla-

tion that will give the commission tools to keep Americans safe from unreasonable dangers in consumer products. Unlike some Members in this chamber and Members of the other body, I appreciate and I welcome your honesty.

I thought the Speaker's press conference of last Thursday was a disgrace to the body and an embarrassment to the legislative process. I often feel that we have an imperial speakership that likes to govern by edict. And I thank you for standing strong in the eye of the storm.

Unfortunately, because you didn't provide the other body the answers that they wanted, they subsequently attacked you. And, Ms. Nord, for the record, I have never doubted your commitment to the safety and welfare of America's families. And I am thankful you are doing everything you can to seek true reform for your agency. Thank you for your service. Thank you for your dedication, and thank you for your commitment to our country.

Tony Blair once said, the art of leadership is sometimes saying no; it is too easy to say yes. Ms. Nord, thank you for being a true leader and for saying no to legislation that you knew would ultimately be harmful to the country.

Mr. Chairman, I want to simply add that, during the process of working on this bill and, in fact, working on a bill through the Oversight and Investigations Subcommittee, I had an opportunity to introduce stand-alone legislation that would have allowed the Food and Drug Administration the ability to stop the importation of a food from a country if the country were shown to be a serial violator of our country's standards.

And we all know the country we are talking about. We are talking about the People's Republic of China. It doesn't matter whether it is food, it doesn't matter whether it is active ingredients in pharmaceuticals or lead in toys, it all seems to come from the same place. And I think the Consumer Product Safety Commission needs that same type of stop button on the conveyor belt.

We heard from the CEO of a major toy company that they are continuing to accumulate lead-based toys in their warehouses because we don't have a stop button on the conveyor belt, because the orders are in, the product is being shipped, the recalls are up there, so they can't sell it—I hope. I hope they can't sell it on eBay; I hope they can't sell it to bargain houses. And perhaps we ought to investigate that some, Mr. Chairman.

But nevertheless, Americans would be better served if we could just simply punch that stop button, halt the conveyor belt for 30, 60, 90 days, whatever we decide is fair, comply with all of the World Trade Organization restrictions that we have to comply with. But let's stop the flow of contaminated products into this country immediately and then get back to sorting out where the problems are.

Mr. Chairman, I am going to submit my full statement for the record. I thank you for your indulgence, and I will yield back the balance of my time.

Mr. RUSH. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

First, I would like to say to the gentleman from Texas, it is one thing when we all work together to resolve a problem of the now millions and millions of products that have been recalled and been found dangerous to our children in the face of their death and injury. It is another thing when the chairman of the Commission designated to take care of those responds to legislation by saying that it would be too cumbersome to actually adopt the reforms that were suggested, that whistleblowers—it would provide too much problem for the agency to take care of, that the penalties would somehow alienate the industry. And the ones who really came to the defense of the chairman were the National Association of Manufacturers, Juvenile Product Manufacturers Association, National Retail Federation—the very people who have been selling or making these products that have been hurting our children.

And so, I think that the Speaker of the House took a responsible position in saying what she did, that if we are going to protect our children, then we need to have the kind of leadership that will embrace the kind of reforms that we need and not raise excuses for not accepting them.

I want to thank you, Mr. Chairman and Ranking Member Stearns, for your leadership on this issue and for holding this hearing.

About 6 months ago, the subcommittee began a series of hearings on how to protect our children from the recent scourge of tainted and imported toys and how to address other shortcomings and issues in the consumer product safety system. Today we have begun to draft what I hope will be a broad and far-reaching and comprehensive reauthorization of the Consumer Product Safety Act, perhaps our Nation's most important piece of consumer-protection legislation.

Yesterday, the White House told us that the President said the American people expect their Government to work tirelessly to make sure consumer products are safe. I couldn't agree more. Families across the country should not have to worry that the toys that their children play with are poisoning them or that their cribs are killing their babies in the middle of the night due to a design flaw.

Most Americans assume that the Government is already doing that work. Seventy five percent of people believe that the Government conducts premarket testing on children's products, for example. Just like they trust the Government when a package of eggs or chicken is marked "USDA inspected and approved," Americans should be able to trust the Government to do more than outline voluntary standards for an industry that profits on children, those who are most vulnerable.

I was pleased when the chairman announced that H.R. 4040, the Consumer Product Safety Modernization Act, would be drafted in a bipartisan fashion, because there is nothing partisan about children's safety. I believe that the bill includes a number of extremely important provisions and that it is time that we do this. I was glad to see that H.R. 4040 contains an improved lead prohibition as well as a mandatory third-party testing and tracking labels for chil-

dren's products. I was happy that it includes the Danny Keysar Product Safety Notification Act, which I had sponsored, requiring manufacturers to provide consumers with registration cards to assist in product recalls.

I am glad that 4040 contains similar language to that which I wrote in H.R. 1698, requiring a broad range of infant and toddler durable products to be tested and certified according to specific safety standards before they can be put on the market. Right now, only full- and half-sized cribs, rattles and bottles are the only infant and toddler products that require safety standards.

By requiring the CPSC to establish mandatory standards and requiring that testing and certification be performed by an independent third party, this bill goes a long way toward assuring parents that the products that their infants use are, indeed, safe.

I hope we will act to strengthen this provision by including the Infant and Toddler Product Review Panel that H.R. 1698 would have created to advise the Commission regarding existing guidelines and promulgating new standards. And it would include representatives of the manufacturers, consumers groups, independent child product engineers and experts and the Consumer Product Safety Commission engineers.

I hope we can look at other improvements. We have a long way to go to strengthen the Consumer Product Safety Act section 6(b) provisions, which still leave far too much power in the hands of industry to regulate itself. It is essential that we also address the preemption issue. The health and safety standards that the CPSC develop should strengthen those States with weaker laws but should not weaken those with stronger laws. And finally, I want to make sure we include effective whistleblower provisions.

Thank you.

Mr. RUSH. The Chair recognizes the ranking member of the full committee, Mr. Barton of Texas.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Thank you, Chairman Rush. I am going to put my formal statement in the record, but I am going to speak from the heart and from personal experience about why we are here today.

I think everybody on the subcommittee knows that I have a 2-year-old son, Jack Kevin Barton. And there are millions of little Jack Kevin Bartons in the United States, and each of them is precious to their parents and to their family, just like Jack is precious to me and my family. And these little tikes are so inquisitive and they are so adventuresome that you really have to be smart to keep them safe.

I will give you an example. It is not a toy, but it is the same principle. Last weekend, my wife had to go run some errands, and so, while she wasn't sure I was capable of taking care of Jack by myself, I was given that opportunity, since we couldn't get a babysitter. And he brought me a bag of microwave popcorn that had he gotten out of the cupboard. And I was watching a football game, and so I said, "No, Jack, your mother doesn't want to you to have popcorn. Put it back up." and he toddles off.

And I am watching the game, and all of a sudden I hear this “beep, beep, beep” coming from the kitchen. He had taken the popcorn back into the kitchen, got a chair, pulled the chair over to the built-in microwave, which is about 6 feet above the floor, climbed up on the chair, opened the microwave, put the popcorn in in the cellophane bag, figured out how to hit the popcorn button, and pushed the darn button. Now, it was in the cellophane, and the cellophane started popping and burning. So I rushed in, and of course he was just proud as punch that he had figured out how to do microwave popcorn, even though he didn’t know he was supposed to undo the cellophane.

That is what we are up against, is 20 million or 30 million Jack Kevin Bartons. If they can get a hold of it, they are going to try to figure out. Now, he has also brought me a child-proof medicine bottle that he has taken the cap off in the last 2 weeks, and he was pretty proud that he was able to do that.

So, whatever we can do to reauthorize the Consumer Product Safety Commission, which hasn’t been done since 1990—and I want to thank Mr. Rush and Mr. Dingell for making that a priority, getting the five-member commission, getting them a new laboratory, setting some new standards for lead, all the things that Congresswoman Schakowsky talked about, that is a good thing. That is a good thing, not a bad thing, because we are protecting youngsters who don’t know enough to protect themselves.

Now, we can’t make it a perfect world, and you have to have parental supervision and we have to have some common sense. But this bill is a good start. And it is good that we are doing it in a bipartisan fashion. It is good that we are doing it by having a legislative hearing at the subcommittee. It is good that we are going to have a subcommittee markup. It is good that we are going to have a full committee markup. By the time this bill gets to the floor, it will be a better bill. It is good that we are having all the stakeholders here on the second panel to give us their comments.

The President of the United States is going to sign something very similar to this bill. And he is going to do it because we are working together. We are not bickering; we are not pointing fingers at each other. And we are all doing it because each and every one of us has either a son or a daughter just like Jack Kevin, has a grandson, a granddaughter, a niece, a nephew, and we care about them.

And this is one of the things that this Congress can take real pride in when it is done. And I am proud to be an original cosponsor, and I am proud to be working with every member of this subcommittee and, ultimately, the full committee to do this. This is what Congress is all about.

And so, Mr. Chairman, thank you for your leadership. I thank Mr. Dingell and Mr. Stearns. And I look forward to hearing our two commissioners and then our stakeholders, and then we will decide what we need to do to improve the bill.

Mr. RUSH. The Chair thanks the gentleman.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

The Chair now recognizes the gentleman from Georgia, Mr. Barrow.

Mr. BARROW. I thank the Chair and the ranking member for you all's relentless pursuit of this issue and your willingness to put behind us the years that the locust have eaten and to get down to trying to address this problem.

Lincoln said that, "As our case is new, we have to think anew." and I think we ought to consider a little bit just how much our case has changed since the Consumer Product Safety Commission was launched way back in 1973.

Back then, I guess it was probably safe to say that our toy market was a domestic market. We consumed the toys that we made. But against that backdrop of putting the CPSC in the picture, there was a whole regime of compliance in this country that we kind of took for granted. We didn't think of it much, because it worked silently through the invisible hand of self-interest.

We had a regime of compliance in which people could actually make manufacturers pay for the consequences of the harm that they do. Granted, that was a reactive approach; the civil justice system making you pay the damages that you cause is a reactive approach, not a proactive approach. But if there is a regime of compliance in which folks can make manufacturers compensate folks for real harm when they commit real harm, you at least are making sure they are not subsidizing people who want to harm people by letting them throw out the consequences of their harm on the consumer.

Now, we had that in this country. And when the CPSC was added to the picture, it was a new cop on the beat. It did not supplant the civil justice system, it supplemented the civil justice system. And the country largely incorporated a culture of compliance, which we had incorporated in the cost of doing business in this country.

Now, fast-forward 20-, 30-some-odd years. We are getting most of our toys in this country from China; 80 percent of our toys are coming from China. And last month alone, we have recalled more products that were manufactured in that country than we have had in any calendar year before.

We have a whole new case now where most of our toys are coming from countries where they don't have a culture of compliance. It might have been hard in the pre-1973 days to go all the way from Georgia to Michigan to sue somebody for the consequences of what they did. But in Georgia, we had the reach of long-arm statutes, and we could hold folks accountable for the consequences of their harm where that harm occurred. We can't do that today. It is virtually impossible to hold a manufacturer in a foreign country accountable for the consequences of the harm that they do in our marketplace as a result of the stuff, the pollution they put into the stream of commerce.

So it seems to me what we have to do is we have to figure out some way to outsource a regime and a culture of compliance, just as we have outsourced all the jobs that make the toys that we consume in this country.

If we can't figure out how to do that, nothing we are going to be able to do with the CPSC is going to work. Because, right now, that is virtually the only cop we have on the beat, when all of the bad guys are now overseas, abroad and beyond the reach of the civil justice system, as a check on the impulse to cut corners and to hurt people for profit.

So we have to figure out some way of exporting a culture of compliance into the places so that we can interdict this stuff and stop polluting the stream of commerce at the source of the pollution. We have to have a point-source pollution mentality about this and go at the source of the pollution, because we can't deal with a flood of products when they arrive on our shores or when they have gotten into our marketplace and try to recall. The costs of doing that are just too high.

We no longer have the other systems to fall back on. We have to realize that the CPSC, which was never designed to be the only cop on the beat when we were making our own stuff, is now the only cop on the beat with respect to all the stuff we consume, because we ain't making it anymore. We are importing it from someplace else. We have to try to figure out how to export that culture. I don't know how to do it.

I know this, though: The issues we need to face are, who ought to pay for it? And the American consumers should not have to pay for making folks in other countries comply with the law. We should figure out a way of making them comply with the law. I am all for the people who are causing the problem bearing the burden of cleaning up the problem. And the American consumer ain't the problem, and the American industry and the American manufacturers ain't the problem, because that is not where the stuff is coming from anymore.

Maybe we ought to take a cue from the USDA, which takes a proactive approach toward meat inspection that we don't have from the FDA when it comes to importing crops that are imported in this country. Go to the foreign country, go to the place where it is made, and inspect what they are doing there, before it gets offloaded from the plant and fed into the stream of commerce.

Maybe we need to take a cue from financial responsibility laws, where we had to post a bond or some source of insurance money as a condition for engaging in certain businesses, so when we extend the reach of the civil justice system in this country to make sure that the people who are getting into the commerce in this country are going to be financially responsible for what they do in a way that is reasonable and accessible to the victims of injury here in this country.

We need to think anew. Our case is new. We have a cop that we have added to the beat that was never intended to be the only cop on the beat. And it is the only cop now, and the problem has gotten much bigger for that cop to do. We have to figure out how to export the culture of compliance we take for granted in this country.

With that, Mr. Chairman, I yield back the few seconds of my time.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentelady from Tennessee, Mrs. Blackburn.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. I thank you and the committee staff for the excellent work on this bill.

You know, having worked in retail and marketing and with consumer products, and sitting on this side of the aisle, I have a tendency to kind of take Reagan's view about the nine most feared words in the Government speak, "I'm from the Government, and I'm here to help." but as we look at consumer products, we do know that that is supposed to be the job of this Commission.

And we have always been very slow to move forward. And, Mr. Chairman, I thank you for the way the subcommittee has worked and has looked into the shortcomings of consumer health and safety laws. And this has been illuminating for many of us.

And I appreciate the efforts that have gone into looking at the Consumer Product Safety Council, looking at the testing problems that exist, the transition in the flow of goods from manufacturer to market and how they are assessed, and the manner—and in the timely manner, I will say—in which they are assessed; looking at the bureaucracy that exists within your walls and how that needs to be reformed and reshaped; addressing jurisdiction in the scope of your work and how that plays forward; communication or lack thereof; practices and best, or lack thereof, practices in how we work with you.

And, Chairman Nord, we thank you and your team for being willing to talk with us, as we try to address these problems that our constituents and many of our constituent companies bring to us. So we thank you for your willingness to work on that.

And we do know that the legislation under review today is a product of an effort to shine the light on what has caused some misgivings and some questions in the marketplace. The CPSC, as we all know in the private sector, are partners. They are, indeed, partners and should continue to be partners in ensuring a safe and healthy marketplace for all consumer goods. That is a big part of your scope of work.

And the incidents that we have reviewed by the subcommittee over the past 10 months have truly shown us that there is a breakdown in this system. And, as we know, it amounts to being basically a breach of the public trust, not only for consumers but also for retailers who are accepting those products into their flow of goods into the marketplace.

Now, our bill—and I understand the number on it is H.R. 4040. I looked at the number, and I thought, Mr. Chairman, we maybe should have had it be H.R. 2020, if that one is available, because we hope it will sharpen the vision and will give a clearer view of what is happening in the stream of moving forward with items in the marketplace.

The legislation mandates third-party testing and certification of all products intended for children aged 6 or under. I think it is critical. Leading American retailers and manufacturers are already employing this practice in the international market, and it is high time to institutionalize this now voluntary standard.

The legislation also authorized \$20 million between fiscal year 2009 and 2011 for the renovation of the CPSC's beleaguered test lab. And I have not personally visited the facility. However, from the witness testimony that we have had from public interest groups and also from Chairman Nord, it is suggested the labs cannot meet the needs of the American consumers in the current state. So it is time to reinvest, update and to add new technologies and protocols that will aid the professionals that are working on this.

We thank the Commission.

Mr. Chairman, I thank you, the subcommittee staff, Ranking Member Stearns and the staff.

And I yield the balance of my time.

Mr. RUSH. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much. Thank you for having this hearing.

The Consumer Product Safety Commission is an agency in crisis, splintered of resources and slow to respond to a growing tsunami of toxic toys and other products that continue to put consumers at risk.

CPSC used to stand for Consumer Product Safety Commission. Today it stands for Can't Protect the Safety of Children Commission. Eighty percent of all toys sold in the United States are imported from China. But even as the amount of imported and recalled toys has skyrocketed, and even as parents scrutinize every gift given by doting grandparents to make sure that it is not on the recall list, the reality is that being on that list only means that the CPSC, with its single inspector testing toys for compliance with outdated standards, got lucky and found the problem before more children were affected.

The reality is that the CPSC has lost 15 percent of its workforce since 2004 and has only half the employees it had 30 years ago. As the holidays approach, parents should not have to play toy box roulette, unsure of whether the toys they choose could harm their children. This must change. We must upgrade our safety standards to reflect scientific reality, and we must upgrade the CPSC to reflect the realities of globalization.

I commend the chairman and the ranking member of the subcommittee for taking up legislation to respond to the current mess over at the Consumer Product Safety Commission. And I look forward to working with them and with Mr. Dingell and Mr. Barton and the other members of the committee to further refine the legislation as we move forward toward markup.

Specifically, we need to close the roller-coaster loophole, which currently prevents the CPSC from investigating accidents at so-called fixed-site amusement parks. Some of these thrill rides hurl children at speeds approaching 100 miles per hour. But when accidents occur, the CPSC lacks the authority to even conduct an investigation or compel the sharing of information about the accident with operators of the same ride in other States. It is time to close

this loophole. Children are at risk all across the country when their parents take them to a fixed-site amusement park, and the CPSC is actually prohibited from investigating. Children should not be put at that risk.

We need to improve the public's awareness of potential hazards. Currently, when the CPSC wants to warn the public about a hazard, it actually has to negotiate with the companies in order to do so. Companies even have the right to sue the CPSC to prevent the disclosures from being made. This is outrageous, and I intend to make an amendment in order to make sure that we change that once and for all.

I believe that the ban on lead in children's products in this legislation needs to be strengthened and accelerated so that it conforms with the 90-parts-per-million standard already adopted by the European Union. I also think that instead of the CPSC's current practice of only looking at the amount of accessible lead on the surface of a toy, legislation should apply the standard to the entire product, because we all know that children put things in their mouths and sometimes they swallow them.

And we need to expand the use of screening technologies that can identify the highest-risk children's products at ports of entry to the U.S. for further screening. If we could screen these toys as they come into the country, we should be able to find Thomas the Toxic Train and other dangerous toys before they show up on store shelves and under the Christmas tree.

And I also believe that this legislation should include whistleblower protections for CPSC and private-sector employees who are retaliated against for warning Americans about dangerous products that can affect the safety and health of American families.

I look forward to working with you, Mr. Chairman, and the other members of the committee toward the goal of putting together, once and for all, a comprehensive approach to how the Consumer Product Safety Commission works out there and actually protecting the American people.

I yield back the balance of my time.

Mr. RUSH. The Chair recognizes the gentlelady from Colorado, Ms. DeGette.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you, Mr. Chairman.

Parents are under a tremendous amount of stress in America today, and who can blame them? One day they hear on television that the spinach that they bought yesterday at the grocery store is contaminated with *E. coli*. The next day they read in the newspaper that the Thomas the Tank Engine toy they bought their young son is contaminated with excessive amounts of lead. It is enough to make any parent terrified that they could be harming their child simply by putting food on the table or toys in the yard.

Today's hearing is before the Subcommittee on Consumer Protection, but, frankly, I don't think consumers are feeling very protected today. They are feeling particularly unprotected when it comes to the safety of children's products, and for good reason.

So far this year, we have had over 150 recall notices issued for children's products and toys. That is up from about 90 during all of last year, and 60 going back to all of 2002. Almost half the products recalled this year were due to excessive lead, a dangerous contaminant for children.

Some, like current Consumer Product Safety Commission Chairman Nord, have argued that the high recall number shows the system is working. I disagree. First, a very small percentage of toys are actually returned once they are recalled. Once these products get into people's homes, they are hard to remove.

And here is a good example. I have these Thomas the Tank Engine toys from my chief of staff's home. My chief of staff is incredibly diligent, and she works on these issues, so she should know. These were recalled in June, and she found them last night in her son's bedroom. They have been sitting there since they were recalled.

So, while recalls are important to get dangerous products out of the hands of children, they are not the sole answer to the crisis of deadly toys. We need to do a better job of testing beforehand, so that the toys that cause harm are never sold to the public to begin with. That is going to take a combined effort from industry and government.

Unfortunately, I don't think that the agency in charge of protecting consumers, the Consumer Product Safety Commission, has the resources and the staffing it needs to do the kind of job that the American people expect and, frankly, have thought, until now, it was doing.

Despite the fact that our economy has grown tremendously since the CPSC was founded in the early 1970's, it has less than half the employees now than it did in 1974 when it was founded, only about 400. According to CPSC Commissioner Thomas Moore, it only has 90 field investigators, about 15 of whom are responsible for guarding against the millions of products that come in through dozens of ports of entry. And as we have heard from other members, the market has shifted, so now 83 percent of our toys are coming in from China.

Inexplicably, President Bush's budget would have caused the CPSC to have cut 19 more staff. That is the wrong approach.

The CPSC is also hamstrung by statutory constraints. Just a few examples: There is no bright-line limit on lead levels in children's products. The CPSC is limited to imposing fines of \$1.83 million, and the CPSC has to use a cumbersome administrative process or, in some situations, go to Federal court to order a mandatory recall.

That is why, back in September, Congresswoman Rosa DeLauro and I introduced legislation, H.R. 3691, the Safety Assurance for Every Consumer Product Act, to address these and other problems as well as make additional statutory improvements. Among other things, our bill would increase the budget of the CPSC by 88 percent over this year's level by fiscal year 2012; impose an absolute standard for lead in children's products of 40 parts per million; eliminate the cap on civil penalties; strengthen the CPSC's mandatory recall powers by eliminating the need for a hearing before a recall is ordered; require independent, third-party testing to make

sure products meet safety standards; and prevent the CPSC from issuing rules which preempt State law.

Mr. Chairman, I was very happy to see that the bill you introduced last week, H.R. 4040, contains many similar provisions. I am an original cosponsor of H.R. 4040, and I think it goes a long way.

I look forward to this hearing. I also look forward, Mr. Chairman, to working with you and your staff to see if some of the provisions of Congresswoman DeLauro's and my bill can be incorporated in this legislation as we move forward.

I just want to talk briefly—well, maybe I won't. I will yield back. I will ask in the questions. I am very concerned about the CPSC travel, and I know that the manager's amendment we are going to do to the bill will address that. It is more than an appearance of impropriety, Mr. Chairman.

And I thank you for your indulgence.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Waive an opening, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentlelady from Oregon, Ms. Hooley.

OPENING STATEMENT OF HON. DARLENE HOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Ms. HOOLEY. Thank you for holding this important hearing.

And thank you, Chairman Nord and Commissioner Moore, for being here today and providing your testimony.

I commend the enormous amount of work that has gone into crafting H.R. 4040. And although I think there are some pieces of the bills that can be improved, this comprehensive and bipartisan legislation is a huge step in the right direction.

I am also pleased that H.R. 4040 includes very similar language to a bill I introduced requiring that children's products are certified safe. My legislation called for toys intended for children 5 and under be certified, and I commend the subcommittee for raising that age to 6.

At this critical time before the holiday gift-giving season, it is vital that Americans can trust and know that products they purchase for children are safe. There have been over 21 million children's products recalled this year. I wish I could say that things were getting better, less dangerous toys were reaching our shelves, and that the CPSC was achieving its mission. Unfortunately, I cannot. Dangerous toys are still reaching our shelves, and the CPSC is still unequipped to handle its enormous task.

Hopefully, this hearing will serve as an opportunity for Chairman Nord to more emphatically convey what is clear to me: The CPSC is an agency in distress and not meeting its mission. I believe it is due to several things, one of which is too few resources and not enough regulatory authority.

Chairman Nord, as head of the CPSC, should be the one who is in the best position to see the shortcomings with her distressed agency, but unfortunately this has not been the case. In a Senate hearing, Chairman Nord was pressed on what resources the CPSC

needed to function properly, and she was noncommittal, saying the job could be done by the President's budget. I flatly disagree.

According to internal records obtained by The Washington Post, Chairman Nord, as well as her predecessor, traveled at the expense of the toy, appliance and children's furniture industries and others that her agency is charged with regulating. This includes trips sponsored by lobbying groups and lawyers representing the makers of products linked to consumer hazards. Chairman Nord has pointed out that this falls within the Federal guidelines. These guidelines that she cites also state that agencies must avoid the appearance of impropriety. In my mind, travel paid by the very companies an agency is charged with regulating does not meet this standard.

A great deal needs to be done to make sure that what goes on our store shelves are safe and that Americans can trust that the toys they bring home for their children to play with are safe. I applaud this committee's work on this issue and look forward to a markup as soon as possible on this important bill.

And I yield back the remainder of my time.

Mr. RUSH. The Chair thanks the gentlelady.

Any other statements for the record will be accepted at this time.

[The prepared statement of Mr. Fossella follows:]

PREPARED STATEMENT OF HON. VITO FOSSELLA, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEW YORK

Today's hearing provides an important opportunity for Congress to examine the health-related impacts on children who are exposed to excessive levels of lead as well as recently introduced bipartisan legislation from the chairman and ranking members of both the full and subcommittee. As we have all read in various news publications over the last several months, children's products, typically toys and jewelry imported from China, have contained unsafe levels of lead or lead paint, putting our children at great risk.

I would like to thank Chairman Rush and Ranking Member Stearns for the opportunity to speak at this hearing this morning. I would also like to thank each of the panelists who have agreed to testify before the subcommittee this morning. I believe the safety of our children is one of the highest priorities Congress must adhere to. I personally have three young children and being a parent, I want to know that the toys my children are playing with and the jewelry my 4-year old daughter is wearing is going to be safe and not contain unsafe levels of lead. It is my firm belief that parents should feel safe when purchasing toys and jewelry for their children, yet I come to this hearing today wondering if they can be assured of just that. I ask each of you this one question today: How can we assure parents that the products they are purchasing for their children are safe?

In testimony before this subcommittee in early June, the acting chairman of the Consumer Product Safety Commission detailed her recent meeting with Chinese officials to discuss the safety of consumer products imported from their country. Recommendations were made regarding initiatives the Chinese could take independently and in conjunction with the CPSC. However, with the alarmingly high rate of recalls of such products from China, coupled with the recent headlines, the public has a right to know in greater detail the nature and depth of the problem as well as potential risks of other consumer products imported from China.

The recent headlines about the safety of Chinese manufactured products hit home in Staten Island in early June when two of my constituents were hospitalized after using contaminated toothpaste made in China. The toothpaste, manufactured under a counterfeit Colgate label, contained a harmful chemical commonly used in antifreeze. This instance, coupled with the toy recall, raises continued red flags as to the safety of the products we are importing from our second largest trading partner. These two instances highlight a possible pattern and warrant a full and comprehensive examination by the U.S. Congress.

There have been several pieces of legislation introduced in both the House and Senate. I am happy the recent House introduced version that we will be discussing in great detail today is bipartisan. I remain hopeful that the testimony and ques-

tions today will provide us with additional opportunities and ideas on how to potentially improve this legislation even further.

While the CPSC may be a small agency, its size should not diminish how important their role is in protecting the American people. The staff at the CPSC are dedicated to providing this service in the most efficient and effective approach. If an opportunity to improve upon their effectiveness is available, Congress should pursue these opportunities with an open mind and with one main goal in mind: protecting the American people in the best possible manner.

I look forward to working with this committee, the CPSC and manufacturers from across the spectrum to pursue the kind of reforms that will direct the focus on what matters most and that is the safety of our children. Again, I would like to thank the Chairman and Ranking Member for this opportunity today and I look forward to hearing the testimony of our panelists.

Mr. RUSH. Now the Chair and the committee welcomes panel No. 1.

Panel No. 1 is composed of the Honorable Nancy A. Nord, the Acting Chairman of the Consumer Product Safety Commission. Chairman Nord was appointed as a Republican member to the Consumer Product Safety Commission in 2005 to a term that expires in 2012. She has served as CPSC's Acting Chairman since July 2006.

The committee also welcomes the Honorable Thomas H. Moore, the Commissioner of the Consumer Product Safety Commission. Commissioner Moore began service on the CPSC in 1995 as a Democratic appointee. He is currently serving his third term, which expires in 2010.

The Chair welcomes our witnesses today.

And you are recognized, beginning with Chairman Nord, for 5 minutes for opening statements.

**STATEMENT OF NANCY A. NORD, ACTING CHAIRMAN,
CONSUMER PRODUCT SAFETY COMMISSION**

Ms. NORD. Thank you, Mr. Chairman, Congressman Stearns and members of the subcommittee.

Mr. Chairman, you have requested that I appear here today to give you my views on H.R. 4040, and I want to be very clear, and I will only state my views, because I certainly do not want to get in trouble with you.

You and your staff, as well as Congressman Stearns, Chairman Dingell, Ranking Member Barton and 45 other co-sponsors of the bill, have worked hard to draft and introduce a thoughtful bill that takes into account both the enforcement needs of the agency and the realities of the modern consumer marketplace. On balance, I believe the bill will be a win for consumers and should give us the additional enforcement tools we need to expand our ability to keep unsafe products out of the stream of commerce.

With respect to the specifics of the bill, I very much appreciate the fact that H.R. 4040 has adopted in whole or in large measure several of my legislative recommendations from this past July when I submitted to you my PRISM proposal. Of particular importance to enhancing the mission of the agency are an overdue prohibition on the sale of recalled products—

Mr. RUSH. Would you pull the mike closer to you, please?

Ms. NORD. Of course—an increase in our statutory penalty cap, asset forfeiture as a criminal enforcement option, among other things.

There are other provisions in the bill, notably the section dealing with lead and children's products, and I understand that these may be evolving. And I have directed the CPSC staff to continue to provide technical expertise and input on that and any other section of the bill that you would like.

But, as I said, this bill represents a significant, positive step forward for consumer product safety; and I appreciate all the leaders in this committee who have brought it forward on a bipartisan basis.

Mr. Chairman, with my remaining time and with your indulgence, I would like to clear the air about a few things that have been the focus of a good deal of media attention of late.

First, with respect to toys, the number of toy recalls has not in fact skyrocketed, as I have seen reported in the media. For the fiscal year ending September 30, we had 61 recalls of toys, 19 of which were for violations of the statutory ban on lead paint. The year before, we had 40 recalls, three of which were for violations of the lead paint ban. The increase in lead recalls has been driven by this agency insisting that the laws be enforced. We all take toy safety issues very seriously, especially with respect to lead, and toy companies at our insistence have searched their existing inventories for even the slightest evidence of a violation. But I believe that we are starting to turn the corner on the lead paint issue. Does that mean we will never find a violation again? Probably not. But our enforcement activities and the media attention to this issue have made the number of violations that we expect to see far less likely.

Second, let me please lay to rest once and for all the myth that has been perpetuated by the media that we have only one toy tester. We do not. In fact, we have a number of staff in our laboratory who are charged as a primary or significant part of their responsibilities with the testing of toys for small parts, for lead and for the other elements of our toy standards. We have at least another 60 field personnel who as a part of their routine responsibilities test toys for violations.

And, finally, because Representative DeGette and Representative Hooley have raised the issue of travel, I do want to address it.

I have taken three trips that have been called into question by the Washington Post. Two are to toy industry conferences where I and CPSC staff educated toy manufacturers and importers about our various toy standards in an effort to increase compliance with those standards. Our direct travel expenses were paid by the Toy Industry Association. This practice, while it has not been common for me, is a legal and common practice throughout the Federal Government and one that has been in place at the CPSC for the last 20 years, long before I came to the Commission.

I, my colleague, CPSC staff members, including those on Chairman Brown's staff, have done such travel for two simple reasons, first, to further the mission of the CPSC to reduce the likelihood that unsafe products will enter the marketplace. The second reason, quite frankly, is that, faced by limited enforcement dollars,

Mr. Chairman, I would much rather spend \$900 on paying for more testing of toys and more resources at our laboratory than I would on airfare and a hotel to go to present our toy standards at an industry conference. If others disagree with that position, then I respect their opinion, but they are not necessarily in the same position as I am of having to make these kinds of resource allocation calls.

I have asked for both an internal and external investigation of our practice in accordance with Federal law and regulations, and I wait and will abide by the determinations that come out of that review. And I will, of course, adhere to any change in Federal law that Congress sees fit to make.

In conclusion, those of us at the CPSC are working hard every day to find and remove unsafe products from the marketplace, to respond to consumer complaints, to establish product safety standards and to educate the public. The product that Congress came up with—

Mr. RUSH. Madam Chairwoman, would you please bring your remarks to a conclusion?

Ms. NORD. I would be happy to conclude by saying to you, sir, that the product that you came up with in 1972 is essentially sound, but it could work better. I appreciate and welcome your efforts to make it work better, and I look forward to working with this committee. Thank you.

Mr. RUSH. Thank you.

[The prepared statement of Ms. Nord follows:]

STATEMENT OF NANCY A. NORD

Good Morning Mr. Chairman, Congressman Stearns, and members of the committee.

Thank you for inviting me to testify this morning on H.R. 4040, the Consumer Product Safety Modernization Act of 2007, which was introduced last week to modernize the governing statutes of the U.S. Consumer Product Safety Commission (CPSC).

I want to begin by congratulating the Committee on the open and bipartisan deliberative process that has resulted in a bill that is focused on CPSC's core mission of improving the safety of consumer products for American families.

As Acting Chairman of the CPSC, I have appreciated your staff's engagement of the professional staff at my agency in developing this legislation, as well as previous consumer product legislation that was reported from this Committee and subsequently approved by the full House of Representatives last month. Though the CPSC is a small agency, we are fortunate to have a staff of dedicated career civil servants who are skilled in an impressive array of legal, technical and scientific disciplines. They are doing an outstanding job for the American people, and I am pleased to see their expertise reflected in your legislation.

I also want to thank the committee for including in this bill a number of the proposals that I submitted to Congress earlier this year to strengthen the CPSC's ability to reduce hazards associated with consumer products. I note, for example, that Section 204 of your bill includes my proposal to speed agency rulemaking by giving the CPSC the option to employ either two-part or three-part rulemaking under all of our statutes. This change will make our regulatory process more streamlined, efficient and effective, and I thank the Committee for accepting it.

Additionally, section 208 includes my proposals to clarify that the Commission is the final arbiter in deciding whether a company's recall remedy should be a refund, a repair or a replacement and to empower the Commission to take further corrective actions if consumers are not protected by the original plan. I also appreciate that the Committee has included in the bill my proposals to prohibit the sale of recalled products and prohibit stockpiling under all of the statutes that the CPSC enforces.

The legislation also includes a more than five-fold increase in the cap on CPSC's civil penalties. That provision passed the House of Representatives by voice vote last month, and I am pleased to see it included in this comprehensive bill. This is a rea-

soned approach to increasing the agency's civil penalties and strengthening the agency's hand, without forcing the CPSC to respond to a flood of new litigation and drain our limited resources that could otherwise be used to hire more scientists and more safety inspectors.

With regard to the lead provision, I appreciate that the Committee is moving toward a stronger standard, and I look forward to continuing discussions on that provision between your staff and technical experts here at the CPSC to assist you in achieving that goal.

As you well know, CPSC's statutes have not been updated by Congress since 1990. Clearly, the dynamics of the marketplace have changed dramatically over these years. New technologies have emerged, and continue to emerge, in creating and manufacturing products. Electronic technologies have changed the way that consumers shop and purchase goods and the way that the public receives information. Perhaps the most significant change is that most of America's consumer products now come from overseas.

So it is important that the Committee is moving forward to modernize this agency, but it is also important to recognize that the legislative foundation on which the CPSC was built is a fundamentally strong one. No small amount of work went into the crafting of the original legislation that created the CPSC in 1972. The National Commission on Product Safety worked for three years before presenting its findings to the Congress in 1970, and the Interstate and Foreign Commerce Committee, as this committee was then known, held thirteen days of hearings and ten executive sessions, including joint sessions by the conference committee.

I would note Chairman Dingell's key role in authoring and enacting this legislation that established an agency that has served the public well. We are proud of our thirty-four year record of achievement of reducing deaths and injuries and helping to protect the American public from consumer product hazards—a successful record that I have outlined on numerous previous occasions this year in testimony before your Committee.

The core mission of the CPSC is to protect the public from unreasonable risks of injury and death associated with more than 15,000 types of consumer products under the agency's jurisdiction. We fulfill this mission by enforcing our governing statutes, including the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), and the Poison Prevention Packaging Act (PPPA).

Since being appointed to the Commission two years ago, and subsequently becoming Acting Chairman last year, I have closely studied, enforced and directed the implementation of these statutes. Based on my study of our statutes and this working experience, earlier this year I submitted to Congress a comprehensive list of legislative proposals known as the Product Recall, Information and Safety Modernization Act, or PRISM.

As Acting Chairman, I believed that it was important for me to be proactive and come forward to Congress with my ideas to strengthen the Commission's hand in enforcing our laws and protecting the American public from unsafe products. As mentioned earlier, I am pleased to see that a number of the proposals I advocated at that time are included in your bill.

In that spirit of being pro-active and advocating change, I would like to take advantage of this opportunity to ask the Committee for additional powers that were included in PRISM but are not included in the legislation at this point.

First of all, I proposed in PRISM that the CPSC be granted authority to promulgate regulations for the efficient enforcement of any statute it administers, just as we can now do under the FHSA. This would clarify that the Commission can issue enforcement regulations in addition to consumer product safety standards under any of our statutes where warranted to carry out our mission.

Another proposal that I would encourage the Committee to consider further is to extend the existing certification requirement under Section 14 of the CPSA to all statutes administered by the Commission. This would avoid confusion among the disparate certification and labeling provisions of the CPSA, FHSA, FFA and PPPA.

I believe that these changes would strengthen the Commission's hand, and I hope that the Committee will take a close look at them as we move forward.

Mr. Chairman and Mr. Stearns, I again want to commend your leadership in crafting legislation that recognizes the importance of CPSC's core safety mission and strengthens our ability to achieve that mission. It is clear that much hard work went into developing this important legislation. It respects the important foundations of the CPSC while at the same time addressing the challenges of the 21st Century marketplace that our aggressive enforcement activities have exposed, especially this year.

I look forward to continuing to work cooperatively with the Committee as your bill proceeds through the legislative process, and I am pleased to answer your questions.

Mr. RUSH. Commissioner Moore, welcome again and, please, you have 5 minutes for an opening statement.

**STATEMENT OF THOMAS H. MOORE, COMMISSIONER,
CONSUMER PRODUCT SAFETY COMMISSION**

Mr. MOORE. Thank you very much. Mr. Chairman, Mr. Ranking Member and members of the subcommittee, I appreciate the opportunity to appear before you today to provide testimony on H.R. 4040, legislation to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

As the members of this subcommittee know, the U.S. Consumer Product Safety Commission needs help. It needs additional resources, more staff and greater authority to protect consumers from potential product hazards. And you have responded positively. I am extremely gratified by the authorization levels in the bill and by the bill's clear acknowledgement that consumer product safety must remain an important Federal Government function.

This bill recognizes that it will take time for the agency to rebuild. We cannot do it overnight. The downsizing and dismantling of the agency has been going on for a while, so I ask you to be patient with all of us at the agency as we rebuild our staff expertise and, with your strong support, refocus our efforts on providing a greater level of product safety with the increased capabilities this bill would give us.

We have lost many experienced and talented people in the last few years, people who knew instinctively when they saw a product whether it was badly designed or if it was just a plain bad idea from a safety standpoint. We have increased our information technology spending as a way to compensate for the reduction in the size of our staff, but no computer that I am aware of can look at a product and know that it should be removed from the marketplace. Only experienced, trained people can do that.

The real backbone of the agency is its staff, our toxicologists, our pharmacologists, our mechanical engineers, our human factors specialists, our chemists, our investigators and, yes, even our lawyers. We need to retain our current employees and recruit additional staff. They are the key to the agency fulfilling its role as protector and enforcer. This bill will allow us to rebuild our staff and should send a signal to current employees that the agency will be around for a long time and that they should stay and rebuild with us.

There has been much attention paid lately to recalls of important products, and rightly so. The Commission currently has no full-time presence at any port and little or no presence at several of the major ports. We currently inspect less than 1 percent, less than 1 percent, of the products under our jurisdiction that come into this country. This is not quite as bad as it sounds because we do targeted surveillance. That is, we look for specific products and for specific importers that we know from past experience to be problematic.

I do not know what percentage of all potentially problematic products we inspect, but it is still probably a fairly small number. We will, I am afraid, always be at a disadvantage in policing this huge import market. But with more people at the ports, more people scrutinizing products at retail outlets and the manufacturing plants and with more people at headquarters and in our laboratory analyzing products and employing stronger enforcement tools to require recalls in a more timely fashion, we can do a better job of keeping hazardous products out of the marketplace before they cause injuries, than our current resources and authority permit us to do so.

We tend to take the safety of our products, and the Commission's role in that, for granted until a tragedy occurs. The real tragedy would be not to take advantage of the opportunity we now have to make the Commission stronger.

I understand that this legislation will go through changes as it moves through the legislative process, but it is a very good foundation on which to build. Your bill sends the message that the American public wants to hear, that you will not permit the Commission to wither on the vine. You will reverse the downsizing trend of recent years, and you will give the agency the enforcement tools it needs to aggressively fight to protect America's consumers.

Thank you for providing me with this opportunity to appear before you, and I will address questions you may have. Thank you.
[The prepared statement of Mr. Moore follows:]

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I understand that the legislation will go through changes as it moves through the legislative process, but it is a very good foundation on which to build. My staff and I have not had the opportunity to review the bill's provisions as carefully as I would like, thus the comments below are somewhat general in nature. My staff will be conferring with the subcommittee staff and may provide them with more detailed comments on some sections of the bill after we have reviewed them more thoroughly, including timing requirements and issues of prioritization.

SECTION BY SECTION COMMENTS OF H.R.4040

Section 101. Ban on Children's Products Containing Lead.

I have been on record for some time as stating that I hoped Congress would take up the issue of lead in children's products because the statutory constraints under which the Commission labors are too stringent when it comes to something as clearly toxic to our children as lead. Personally I do not think there should be any lead in children's products and I hope one day we are as amazed that there was ever a time that these products contained lead as we are now when we remember that water coolers were once lined with lead. This bill's aim is to get the amount of lead down to the lowest level possible and I certainly support that goal.

Section 102. Mandatory Third-Party Testing for Certain Children's Products.

I support mandatory third-party testing and certification of children's products, especially of products intended for younger children. I am inclined to agree that the laboratory should not be controlled by the manufacturer or private labeler, but would also consider a provision that would allow manufacturer-owned labs to do testing unless and until such time as we had reason to believe their test results were not accurate.

Section 103. Tracking Labels for Children's Products.

I support having identifying marks on products and product packaging that help manufacturers, retailers, consumers and the Commission to identify when and where a product was made. I would like eventually to see this on all products so that in the event of a recall, the Commission has a tool to more clearly identify which products should be subject to it.

Section 104. Standards and Consumer Registration of Durable Nursery Products.

We know that direct notice to consumers from a product manufacturer about a recall is the most effective form of notice; therefore, I support requiring product registration card notification.

Section 105. Labeling Requirement for Certain Internet and Catalogue Advertising of Toys and Games.

I support this provision. As more and more products are purchased through a catalogue or over the Internet without the buyer ever viewing the actual product, the effectiveness of our labeling rules becomes more and more diminished. This would rectify that problem.

Section 201. Reauthorization of the Commission.

I support substantial increases in the Commission's appropriations, and these authorization figures will provide the basis for that through 2011. I also support a congressional appropriation to modernize and re-equip our laboratory.

Section 202. Structure and Quorum.

I support both an extension of the Commission's quorum and the gradual increase in the number of Commissioners, back to the five that were originally funded.

Section 203. Submission of Copy of Certain Documents to Congress.

I support Congress receiving a copy of our initial annual budget submission to the Office of Management and Budget. I believe it will provide Congress with the information it needs to better analyze the President's budget request.

Section 204. Expedited Rulemaking.

I support giving the Commission the authority to use, in its discretion, two-step rulemaking instead of the longer three-step rulemaking process. I would expect the two-step procedure to be used on more routine matters and not, for example when the Commission is taking on an issue of which it has little knowledge or experience.

Section 205. Public Disclosure of Information.

I am on record as supporting the elimination of section 6(b) of the CPSA, which has the effect of keeping a great deal of product specific safety information secret. While the provisions of this bill do not go as far as I would like, they are a step in the right direction.

Section 206. Prohibition of Stockpiling Under Other Commission-Enforced Statutes.

I support extending the stockpiling provisions to our other statutes.

Section 207. Notification of Noncompliance with Any Commission-Enforced Statute.

I support explicitly extending the reporting requirements of section 15 (b) of the CPSA to the other statutes the Commission enforces.

Section 208. Corrective Action Plans.

I support giving the Commission the final say as to whether a proposed corrective action plan will adequately protect consumers.

Section 209. Website Notice, Notice to Third Party Internet Sellers, and Radio and Television Notice.

I support the enhanced recall notice provisions of this section.

Section 210. Identification of Manufacturer, Importers, Retailers, and Distributors.

I support requiring everyone in the product supply chain to know who they are dealing with and to supply that information to the Commission upon request.

Section 211. Export of Recalled and Non-Conforming Products.

I have urged Congress to reexamine our export policy. I believe a policy that recognizes that we can only expect other countries to protect our consumers from their exports, if we are willing to make the same commitment by not sending them products that could harm their consumers. I believe this section does that.

Section 212. Prohibition on Sale of Recalled Products.

I support prohibiting the sale of recalled products.

Section 213. Increased Civil Penalty.

I have long supported the removal of any upper limit on civil penalties because I think the types of products we regulate and the different and multiple types of violations that are possible under our statutes, as well as the circumstances that contribute to those violations, are so disparate that we need maximum flexibility to fine companies who violate our requirements. Our statutes list various factors we must take into account in determining the amount of the penalty and those are what we should look to in structuring penalty amounts not an arbitrary ceiling that has no relationship to the facts of the violation(s). But, if there must be a cap, an increase is extremely welcome, though I would urge a higher one.

Section 214. Criminal penalties to include asset forfeiture.

I support this provision to give us the additional penalty of asset forfeiture for criminal violations of our statutes.

Section 215. Sharing of Information with Federal, State, Local, and Foreign Government Agencies.

I support this information-sharing provision.

This comprehensive legislative package introduced by Congressman Bobby L. Rush and Congressman Cliff Stearns, with Energy and Commerce Committee Chairman John Dingell and Ranking Member Joe Barton, is a big step in strengthening and restoring confidence in the U.S. Consumer Product Safety Commission.

It is very important that in whatever we do collectively—through efforts by the administration, by Congress and by the Commission—to address the most recent problems facing the Commission, that we send the clear, unequivocal message to manufacturers, importers and retailers who sell products in this country that present a risk of injury to consumers that their actions are unacceptable and that they will be held accountable. This legislation will give us more resources and additional enforcement tools. It will then be up to the Commission to use them to make the marketplace a safer place for American consumers.

Mr. RUSH. The Chair thanks both of the witnesses. The Chair recognizes himself for 5 minutes of questioning of witnesses.

Commissioner Moore, if you had one overriding relevant key wish as it relates to this bill, what would be the one thing that you think that would make the most difference at the CPSC?

Mr. MOORE. At this point, the increased funding reflected in the authorization numbers is by far the most important provision. We have to stop the bleeding at the Commission and reverse the trend that has cost us so many valuable employees.

Aside from funding, what are the most important provisions? The provision banning lead I think in children's products above a certain level has to be a priority. As well, the increase in the civil penalty cap, which is a reflection of how important we think product safety is in this country.

Mr. RUSH. Chairman Nord, do you agree with Commissioner Moore that CPSC needs the resources that this bill authorizes?

Ms. NORD. I wholeheartedly agree and would like to see more resources for the agency.

In addition to the things that Commissioner Moore listed, I would also add that a very, very useful addition to this legislation would be certification authority across the board for all the statutes that we implement. I think that one additional statutory tool would go such a long way to giving us an ability to more easily flag products that may be in violation of our standard, and I would strongly urge you to include that as you mark up this legislation.

Mr. RUSH. Would you explain in more detail how this certification process would work?

Ms. NORD. Surely. I believe it would be a very useful tool to require that all product sellers certify to us that they are in compliance with applicable safety standards and regulations. That would give us a key to look at as products come into the country and as they are being sold throughout the marketplace.

Mr. RUSH. With the H.R. 4040's proposed changes to section 6(b), would this CPSC be issuing more alerts more quickly about unsafe products? In other words, would you use it to strengthen health and safety exception in more circumstances if this bill were to become law?

Ms. NORD. Well, I was pleased to see the way that the committee approached section 6(b) because it really does modernize it in a way that I think is very, very useful.

With respect to safety alerts, obviously, we address these issues on a case-by-case basis; and I want to make sure that if we see a problem, that we have the tools to respond. So I am pleased to see what you have done with 6(b).

Mr. RUSH. Would you address the concern that has been voiced by the CPSC about the fear of litigation? Why was the CPSC so afraid of litigation that it would inhibit getting information out to the public? What was the concern there?

Ms. NORD. You mean with respect to 6(b)?

Mr. RUSH. Right.

Ms. NORD. Section 6(b) put in place a prohibition on the release of information without first making an inquiry as to whether it is fair and accurate. And the problem is that that inquiry needed to be done in a 30-day time frame going back to the manufacturer.

What you have done is cut that time frame in half, and you have also indicated that and make very clear——

Mr. RUSH. What I am concerned about is it would seem to me that there was a real deep-seated fear at the CPSC about court—my time is up, but I will ask you that a little later.

Ms. NORD. Thank you.

Mr. RUSH. The Chair recognizes the ranking member, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Chairman Nord, I guess the question is that the press, most notably the New York Times, have claimed that you oppose new authority for the CPSC. I think it is true, and I would like you to confirm this, that you actually had proposed new authorities for the Commission?

Ms. NORD. Yes, I have. Back in July of this year I sent to both bodies a legislative proposal that contained no fewer than 40 different suggestions for changes in our statute.

Mr. STEARNS. So that clears up the New York Times saying that you actually oppose new authority. You have 40 new ones that you have proposed.

I would like you to also talk about this letter that I mention in my opening statement, these 5 pages. You are an attorney. You have the opportunity to respond to a Senate bill that is being proposed, not voted on. You are just saying, as an attorney, as chairwoman of the CPSC, I would like to make known to you some of my comments; and these are very detailed comments you have in this 5 pages of letter. I thought I would give you an opportunity to explain your thoughts about it and your goals in sending it, because I think it is been misconstrued on one side of the aisle and misconstrued in the press.

Ms. NORD. Yes, thank you so much, Congressman Stearns.

At the hearing on this legislation, the chairman made very clear that he welcomed input from——

Mr. STEARNS. The chairman being?

Ms. NORD. The Senate subcommittee chairman—made very clear that he welcomed input from all quarters on the legislation.

I sat down and met with the Senate majority staff for well over 2 hours and after that meeting indicated to them that I would be following up. That letter is my follow-up. I felt I had an obligation to state to the members of the committee my concerns about the legislation and where I thought improvements could be made.

If you read that letter, you will see that I reference legislative changes that I was suggesting that were forwarded along with that letter. I felt that as a public official it is my obligation to talk to the Senate about——

Mr. STEARNS. I think it would be a dereliction of your duty if you didn't talk about the penalty cap increases that you specified in here, your criminal penalties that you went into, the whistleblower protection. Sometimes people would dwell on one sentence of this five-page, detailed, lawyerly written letter, but I think you have a fiduciary responsibility in your position to do that.

Ms. NORD. Well, my concern, and the portrait I wanted to convey to the Senate, was, while there were a number of things that were very helpful in the Senate bill, there were some things that were

of concern and that might take us away from our core safety mission.

In addition, there were a number of new rulemaking requirements being imposed under a very tight time frame; and, frankly, we would not have had the resources to comply with the legislation.

Mr. STEARNS. One thing I read in the newspapers, they say that there is only one toy tester at CPSC. And you have cleared this up before this hearing, and I thought for one more time for the record, is there only one toy tester at CPSC?

Ms. NORD. No, there are a number of people on our staff that have the responsibility to test toys.

Mr. STEARNS. Including independent testers, there are 60 testers in the field. So let us make sure that people don't think that there is one person sitting there as the avalanche of toys come from China.

The other thing that keeps coming up is there are more recalls, so that means there is more danger. You know, one way to think of this is that because there is more notification from the CPSC there is a possibility it is working, the system is working better. Has anyone died this year from lead contamination in toys?

Ms. NORD. I am not aware of any deaths. But, of course, with respect to lead contamination it is cumulative, so we don't want to see lead in any product, and we are working very hard to keep it out.

Mr. STEARNS. But can we determine over the last 50 years any death that has been attributable to lead content in their—I mean, where do we get this idea that—I mean, we know that it is an accumulation, and we know that it is bad. But the idea that we are notifying and we are meeting a standard, I guess is there a crisis like some people seem to think?

Ms. NORD. Well, crisis or no, the statute is the statute, the law is the law, and I am absolutely determined that the lead paint ban is going to be met. And that is why we have had these 19 recalls over the last summer.

Sir, with respect to the comment of why are recalls bad or escalating, we did 5 or 6 more recalls this year than we did last year.

Mr. STEARNS. That might be a possibility that the system is working?

Ms. NORD. Well, we work in a system that requires us to respond after things have been put on the market. That is the regulatory structure that Congress imposed on us. So we go into the marketplace, and we police the marketplace. And one of our tools is to do recalls, and we do do them.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. RUSH. The Chair has a special request from the ranking member. He has got to leave, and the Chair would ask the indulgence of the full committee chairman to allow—he has got to leave, also. I want to thank the chairman.

The Chair now recognizes the ranking member of the full committee, Mr. Barton, for 5 minutes.

Mr. BARTON. I want to thank you, Mr. Rush, Ms. Schakowsky and Mr. Dingell for letting me go out of order. I have an appoint-

ment that has been waiting for about 20 minutes, so I appreciate that.

I am going to be very straightforward. I am going to ask the chairman and the commissioner the same question. I just want to go through the bill very quickly and make sure that you all are in agreement on adopting the Federal standard on lead. Are you all both in favor of that, that is in the bill?

Ms. NORD. In theory. I mean, yes, in general theory, of course.

Mr. BARTON. And you, Mr. Moore?

Mr. MOORE. Yes.

Mr. BARTON. The requirement for mandatory independent third-party testing and certification, are both of you all supportive of that?

Mr. MOORE. I don't have any problems with it.

Ms. NORD. I think third-party independent testing is always a very good practice.

Mr. BARTON. All right. What about the requirement Ms. Schakowsky has insisted upon that requires tracking labels for children's products to identify specific models and sources to aid recalls? Are you all supportive of that?

Ms. NORD. As long as we have regulatory authority to make that work.

Mr. BARTON. And you, Mr. Moore?

Mr. MOORE. Yes.

Mr. BARTON. What about the mandatory safety warnings for choking and other hazards for Internet and catalogue sales for small balls, balloons and other small parts that currently require such labels?

Ms. NORD. I think warning people who buy products in those alternative modes is very useful. I think, though, that we should be thinking a little bit more expansively about how we deal with Internet sales.

Mr. BARTON. What about you, Mr. Moore?

Mr. MOORE. Yes, they should be warned.

Mr. BARTON. So that is a minimum?

Mr. MOORE. Yes, at a minimum.

Mr. BARTON. That might be something you might want to strengthen then, is that fair to say?

Mr. MOORE. That is fair enough.

Mr. BARTON. What about the mandatory safety standards for the nursery products—cribs, high chairs, things like that?

Ms. NORD. Again, we need to do it under the rulemaking provisions of the statute.

Mr. BARTON. And you, Commissioner Moore?

Mr. MOORE. Well, I would like to review that again in terms of the standards. But certainly with respect to information and events that have occurred in a recent period indicating that there are problems out there, or there can be problems out there with cribs, as an example. Certainly we need to find the best way to protect families from faulty cribs and other types of faulty products.

Mr. BARTON. OK. I am living proof that children are—my son is world class at getting out of his crib now. I mean, he can do it less than 30 seconds. It is amazing. As soon as my back is turned, and

I walk out of the room—I mean, he is just like a little eel getting out of that crib.

The bill authorizes a funding increase of \$80 million in fiscal year 2009, \$90 million in 2010 and \$100 million in 2011. Are those funding increases sufficient and do the chairwoman and the commissioner support them?

Ms. NORD. That is fine.

Mr. MOORE. I support them. I think it is a good start.

Mr. BARTON. A good start?

Mr. MOORE. Yes.

Mr. BARTON. All right. What about restoring to the Commission five full-time commissioners and repealing the appropriation rider of only three commissioners?

Mr. MOORE. I am not certain about that.

Mr. BARTON. Really?

Mr. MOORE. I have to think about it, because I have worked so long with three commissioners.

Mr. BARTON. Interesting. I thought that would be something you all would be very supportive of.

Mr. MOORE. I don't know yet. I would have to see how it might work, but I am willing to test it.

Mr. BARTON. And you Commissioner?

Ms. NORD. I have no position on this. Again, I have never worked in a five-Commissioner structure. I will, however, refer to you to the congressional history of that particular provision where this committee and its counterpart in the Senate were very, very critical of the five-Commissioner structure. And so I think you might want to be mindful of those criticisms, and if you go that route, take them into account.

Mr. BARTON. OK. The requirement that we authorize \$20 million to modernize the CPSC testing lab?

Mr. MOORE. Absolutely.

Ms. NORD. We need a modernized laboratory.

Mr. BARTON. And the expedited rulemaking so that the CPSC can respond more quickly to product safety concerns?

Ms. NORD. I suggested that in July.

Mr. BARTON. So you are for that?

Mr. MOORE. Yes. That is an option we ought to have, yes.

Mr. BARTON. And, finally, the prohibition on the sale and export of recalled, banned or noncomplied products, unless the importing country is first notified?

Ms. NORD. Again, that provision gives us regulatory authority to implement it, so I think we can work within it. The concern that the compliance staff of the agency has expressed is that, without a time certain, you don't have a trigger for when you can make a decision. So a time certain would probably make some sense, and there is such in existing law.

Mr. BARTON. Commissioner Moore?

Mr. MOORE. Yes. That is a provision that I did some work on, so certainly I do support it.

Mr. BARTON. Again, thank you, Chairman Rush and Chairman Dingell. We are going to move this bill fairly quickly. It is my understanding that we want to have a markup within the next week or 2?

Mr. RUSH. That's correct.

Mr. BARTON. So we need your input on these issues that we are going to ask the stakeholders the same questions. But we are preparing to move this at subcommittee and full committee. So your personal attention to some of these issues is very timely.

Thank you again for the courtesy of letting me go out of order.

Mr. RUSH. The Chair thanks the ranking member.

The Chair recognizes the gentlelady, the Vice-Chair of the subcommittee, Ms. Schakowsky, for 5 minutes.

Ms. SCHAKOWSKY. Thank you.

Chairman Nord, if I went to a conference on Medicare Part D, which is the pharmaceutical portion of it, that was paid for by the pharmaceutical companies and argued that it is because I have a limited budget and I want to spend the money in my district, do you think that my constituents would think that that was an appropriate thing for me to do, to take the pharmaceutical company money to travel to a conference where we were discussing things that affected them?

Ms. NORD. I am really not going to address what your constituents would think.

Ms. SCHAKOWSKY. What do you think? What do you think?

Ms. NORD. That is a hypothetical. All I can talk to you about is what I did.

Ms. SCHAKOWSKY. And I am making the case that it is very parallel. In fact, I want to quote from an ethics expert: It is never a good idea to have your expenses paid for by a party or parties who will be advocating on a matter before your agency. A Senate career ethics lawyer and another Government agency required anonymity because it was not clear to comment for the record. It is legal, but it is clearly an abuse of discretion and exhibited, at best, enormous insensitivity and, at worst, outward disdain for the ethical principles of Government service.

I also note in the same article that on February you were asked to recruit paying attendees for a meeting of lawyers who defend manufacturers in product liability cases. In offering to pay for her trip, Defense Research Institute lawyer Steven Coronado wrote, I do ask that you assist in marketing by using the brochures you have received and getting them into the hands of people that you think might be interested in attending. And the comment of the Project on Government Oversight called the request "creepy".

Ms. NORD. I agree.

Ms. SCHAKOWSKY. So you didn't respond to that?

Ms. NORD. Well, with respect to the DRI thing, I have no recollection of anyone asking me to go out and recruit people to attend their conference. I get lots of things in the mail, many of them I don't see, and I didn't do that.

With respect to the bigger issue, the CPSC travel regulations have been in place for 20 years.

Ms. SCHAKOWSKY. No, I heard you say that before.

Let me ask another specific question. In February, the International Consumer Product Health and Safety Organization, a broad-based professional group, balked at the agency's request that it pay for 6 Commission employees to attend its meeting in Orlando. They said they, too, are on a tight budget, offered to pay for

your expenses and partial expenses for one staff member. So is it your policy to actually recruit funding for trips for Commission staff?

Ms. NORD. Of course not, and there was no such request.

Ms. SCHAKOWSKY. Oh, well, so we just have a difference of opinion here?

Ms. NORD. No, no. It is very clear. We do not solicit those invitations.

Ms. SCHAKOWSKY. Well, we will have to check back with that agency that said that there was a request.

Ms. NORD. We will work with you on that.

Ms. SCHAKOWSKY. I will ask them as well.

Is it not true that there is one full-time employee of the CPSC, full-time employee, who is in charge of inspecting toys, Bob, and he is retiring?

Ms. NORD. There are a number of people.

Ms. SCHAKOWSKY. I understand. Is there one full-time employee in charge of—

Ms. NORD. No, there are other full-time employees who test toys; and, indeed, with respect to the employee that you have in mind, he often does other things. That is just an inaccurate statement. It is an urban myth that has grown up around us, and it is really, really time that it be put to rest because it is not fair to the employee and agency.

Ms. SCHAKOWSKY. Well, if I could get a list of the full-time employees that inspect toys, that would be extremely helpful.

Ms. NORD. I would be happy to provide it.

Ms. SCHAKOWSKY. Commissioner Moore, you have asked us for patience. And, right now, consumers are in the buying season for toys for their children and are not feeling particularly patient right now. In fact, I think a lot of them are deciding to go other than for toys, for other products. How long—and I agree that the downsizing has been going on for years. But I am just wondering how long you think it is that it would take for the Consumer Product Safety Commission to regain the confidence of Americans that they could trust the products that they find, particularly for their children? And do you think that our legislation would make a big difference in that?

Mr. MOORE. I definitely think your legislation would make a big difference. I wish I could tell you with some specificity in terms of how long it might take, but we are talking about the need to develop experienced people on these particular issues at the Commission. It may take 2 or 3 years to do that. But, in the meantime, we will be working on it, and we will let the public be aware of our work, and we will continue to look at potentially harmful products.

Ms. SCHAKOWSKY. Mr. Chairman, if I could ask one final question.

Yes or no, Chairman Nord—thank you, Mr. Moore. Would you support a travel ban of the sort paid for by companies as the FDA, the FCC, USDA, Congress have?

Ms. NORD. That is totally up to Congress.

Ms. SCHAKOWSKY. Would you support it?

Ms. NORD. That is up to Congress.

Ms. SCHAKOWSKY. You have commented on many provisions. It is an easy yes or no.

Ms. NORD. If Congress wishes to do that and gives us the budget, yes, of course I would.

Ms. SCHAKOWSKY. Thank you.

Mr. RUSH. The Chair recognizes the gentleman from Texas, Mr. Burgess.

The Chair thanks the gentleman.

The Chair now recognizes the gentlelady from Tennessee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you so much, Mr. Chairman. I thank you and I thank Mr. Burgess for allowing me to go ahead so I can make my meeting.

I am going to follow up on a couple of things and just get a little more in depth; and I thank you, Ms. Nord, for your patience with us today.

We talked a little bit about the third-party testing, and I wanted to know if you could tell us how many companies are using this third-party testing, how many companies under your jurisdiction? Can you give us a number of the number of companies that are using this?

And the other part of this question is, as we have worked through this process, I have wondered about the number of companies that import component parts and then do the assembly in the U.S. Are they going through this third-party testing and can you give us that information?

Ms. NORD. With respect to how many companies are doing third-party independent testing today, it really depends on what kind of product we are talking about. With respect to toys, you have seen that grow dramatically; and, indeed, the toy industry, along with the American National Standards Institute, have put in place an industry-wide plan to deal with this.

Mrs. BLACKBURN. Let me stop you right there then if we don't have a number.

What I would like to ask you all to do—and I am not trying to make work on this—but you have got some working groups that have all worked on this legislation. If you can approach these groups and give us an idea of how many companies are using the independent testing, how many are manufacturing the component parts, doing the assembly here, which we know there are lots of toy companies that do that, and then give us an idea of their use of the independent testing and then be able to let us get an idea of how successful that has been.

I hope they are reporting the data back to you and that you have access to some of this data. I think it would be helpful to you, and I know it would be very helpful to us. We have discussed this issue a lot. You have come before the committee quite a bit. And I wish that you had that information to tell us if the companies feel like they are successful. If they are failing to report data to you I think we need to know that. Once we do this legislation, knowing that that testing works is going to be more than a theory, it has got to be more than a theory.

Ms. NORD. Of course.

Mrs. BLACKBURN. So if you will work with us on that.

Another thing, the \$20 million to update the labs, I want you to speak for a minute, is that sufficient? And what span of time, what is your time line for updating these labs and employing some of the new technologies that should yield better results, quicker turn-arounds, et cetera?

Ms. NORD. I am hopeful that we will be able to do this in a quick time line. We have got a proposal right now with GSA to look at real estate solutions to our laboratory problem. If we stay where we are, we are going to have to basically demolish it.

Mrs. BLACKBURN. Is \$20 million sufficient? Your time line in your proposal, does that cover it?

Ms. NORD. I think \$20 million should do it.

Mrs. BLACKBURN. And then Section 103 of the bill, the labels—and I think Ms. Schakowsky is the one who was talking about that, and you mentioned you needed—if the rulemaking authority was workable, that it would be practicable, I think was your comment to us. And what I would like to ask you is if you would consider this—if the Commission would consider this a new mandate? And then for our small business manufacturers, our small toy manufacturers, if you look at it as an unfunded mandate in that regard.

If you would just speak to that, and if you need to get back to me in writing, I think that is fine, too.

Ms. NORD. Well, I think the underlying intent of the provision is very good. It is very useful to be able to track products back to where they were manufactured. So that I am very pleased with.

But, again, I think the Commission needs the rulemaking flexibility to deal with that issue and others that will come up implementing this.

Mrs. BLACKBURN. So we need to put a little bit more attention on that one is what I am hearing you say.

Section 209, to require a manufacturer to provide notice of recall products on its Web site, to make radio and TV announcements, including in languages other than Spanish, is there any other agency that has had this authority or this mandate and has NHTSA done this? Are you in new territory here or do you have something you are going to lean on for guidance?

Ms. NORD. I am not aware of other agencies that do this to this extent. Of course, NHTSA is dealing with a very heavily regulated product, so it can talk to the companies.

Mrs. BLACKBURN. My time has expired, so let me cut you off.

Mr. Chairman, if I might, if counsel could provide us some guidance on that Section 209, I think that might be helpful as we move forward with our discussion; and I yield my time back. Thank you.

Ms. NORD. Thank you.

Mr. RUSH. The Chair now recognizes the gentleman from Georgia, Mr. Barrow.

Mr. BARROW. Thank you, Mr. Chairman.

Commissioner Nord, in church, when you want to talk to the preacher about something delicate, you don't tell him what you think, you tell him what others are saying. You say, some have said that your sermon is a little too long or some have said that you're not hitting this theme or that theme or some have said that the CPSC ain't exercising its rulemaking authority, that it has got

rulemaking constipation somewhere along the line. I don't know where it is.

But some have even gone so far as to say the manufacturing community would like to have some guidance, like to have some standards, especially those that are complying with best practices, our laws, domestic laws on the subject of the poisons and toxins you are supposed to keep out of products. Some folks have said that it would be helpful.

Now, 4040, H.R. 4040, has got a provision in there that proposes to streamline the process for rulemaking. This is a direct follow-up to the gentlelady from Tennessee's comments about the rulemaking authority. My question to you is, if this were to be adopted and the rulemaking authority for the CPSC were to be streamlined in the manner called for by H.R. 4040, would it actually result in any new rules being adopted or would it result in any rules being adopted in a more expeditious manner? Would anything change? I want to hear from you as to whether or not that provision would actually result in any change in the rulemaking activity of the Commission.

Ms. NORD. Well, since I recommended it, I certainly hope it will. What I think is important is to understand how we would use this.

Mr. BARROW. Can you tell me that it will make a change?

Ms. NORD. Yes.

Mr. BARROW. How will it make a change?

Ms. NORD. It will allow us to operate more quickly, regulate more quickly with amendments.

Mr. BARROW. I understand that as a process. What are the kinds of things we can expect that we haven't seen so far?

Ms. NORD. When we are doing amendments to regulations, when we are doing technical, noncontroversial kinds of regulations, we can do two-part rulemaking, just doing notice of proposed rulemaking and then a final rule, as opposed to the three-step rulemaking which is under our statute.

Mr. BARROW. How many instances can you think of where you all have been unable to get things done under the current three-step process you think you could get done under the proposed two-step process?

Ms. NORD. Again, technical changes, amendments to rules, things that are noncontroversial, things where we are not breaking new territory, I think we can do that in two-step. But where we are doing complicated and new kinds of regulations, then we should have the option to do three-step rulemaking, because that allows us to develop information and refine our regulatory approach to problems.

Mr. BARROW. Well, if this is incorporated in the final bill, I am going to look to you all to exercise that authority to the fullest.

Now I want to follow up on a subject that I raised, and that is the subject of financial responsibility on the part of people who are way outside the reach of the civil justice system in this country, for whom you really are the only cop on the beat anywhere policing a market that is dominated by foreign importers. The Senate has a provision, a bonding requirement, that basically says if you have gotten into trouble and messed up in the past you are going to have to post a bond as a condition of getting back into the marketplace. Well, it seems to me to be pretty silly to give people who

have a demonstrated track record of messing up, to force them to buy their way back into the marketplace when we have no way of knowing who those people will be in advance of the trouble that they cause.

What do you think about the idea of trying to impose financial responsibility as a condition for entering the American marketplace in the first place? I mean, we have lost the ability to hold anybody accountable for what they do. And whenever we have stripped away that fundamental, very conservative underpinning of safety in the marketplace we got to replace it with something or basically going to start subsidizing, corner-cutting in hazard-producing activity in markets that are beyond—by suppliers who are beyond the reach of the folks that they harm. What do you think about something like that?

Ms. NORD. I would like to understand better how that would work, and perhaps we can sit down and talk about that. I would like to see a model for where that has worked in other areas.

Mr. BARROW. I will tell you what my words were. You can't get a license to drive a car in this country without complying with a financial responsibility to law in the State where you want to get your license. And it is not to protect you from other people, it is to protect other people from you.

Now, why don't we apply a similar mentality to folks who want to not just come into a marketplace but dominate our marketplace? Why don't we tell the manufacturers who got 80 to 90 percent of the market in this country that as a condition of you doing business in this country we are going to make sure that you do it right. The goal—what I am getting at is the goal ought to be that if it is bought and sold in the USA, it is going to be just as safe as if it was made in the USA.

Ms. NORD. Well, that is a goal that I think is admirable and agree with.

Mr. BARROW. How can we possibly accomplish that if you all are the only cop on the beat with respect to a market that has gone from 80 percent we make it in this country to 80 percent it is made someplace else and shipped into this country in containers in a vast stream of commerce?

We channel to Mississippi, out of its channel and it is going north instead of south. I mean, it is that big a change in the stream of commerce, and we got nothing, nothing policing it except you guys, and you guys were never designed to be the end-all, be-all and certainly don't have the resources to do that.

Ms. NORD. Well, yes. But I think practically what you are suggesting may have untoward or unexpected consequences, especially on small businesses.

Mr. BARROW. I am sure it will, but so has the current process of basically outsourcing the supply of stuff without outsourcing any of the compliance regime that we take for granted.

Mr. RUSH. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Burgess.

Mr. BURGESS. Thank you, Mr. Chairman.

Chairman Nord, currently within your agency what type of outreach do you do to notify nonprofits and other secondhand retailers when you have a product recall?

Ms. NORD. Each recall, of course, is different, and each recall has an outreach program which is specific to that recall. But what we do at a minimum is we require notice on the Web site, we require posters, we require notification of consumers to the extent that the company knows the consumer, and then we put other requirements on as needed.

Are you talking about older products.

Mr. BURGESS. Anything that might be available for sale at Goodwill, Salvation Army. I have got several—I have got Christian Community In Action. It is a huge resaler in my area. I am also concerned with things on Craigslist and eBay and things like that.

Ms. NORD. I think the best example is our Neighborhood Safety Network, which is something we have developed, which is those kinds of groups. And we use them to leverage, to talk to other kinds of groups. So we do give notice to them and work with them for them to talk to their constituents.

Mr. BURGESS. So can nonprofits sign up for an e-mail alert through CPSC's Web site?

Ms. NORD. Yes. We have a Drive to 1 Million program where people can go to CPSC dot-gov and sign up to get recall notices sent directly to their e-mail in-boxes.

Mr. BURGESS. And then what kind of outreach right now is ongoing to the nonprofits themselves?

Ms. NORD. Again, it depends on specifics. But, for example, with children's products we on a very regular basis do a crib recall round-up. We go out and talk to daycares.

The other thing that I think is very important here is that we notify all the State governors' offices and attorneys general's offices. A number of States have laws that prohibit the sale of recalled products or the use of recalled products, and that is another way that we can get the word out to local—

Mr. BURGESS. So the States have actually involved themselves in the lawmaking process?

Ms. NORD. We have a number—every State has got a CPSC deputy, if you will, and we work with them.

Mr. BURGESS. Can this equity then be translated into, say, having a retailer like Craigslist or Ebay post a banner ad on their Web site to check the product with CPSC for recall information before you buy it?

Ms. NORD. They have been reluctant to do that. But we do have programs with them to make sure that they do not sell recalled products.

Mr. BURGESS. So you do? Do you have ongoing surveillance on these sites?

Ms. NORD. Yes, we do.

Mr. BURGESS. That's very good.

Going back to the stuff I was talking about in the opening statement, the stuff about with the Food and Drug Administration, we are going to have legislation there; and I have added my own legislation that would allow the commissioner of the Food and Drug Administration just simply arrest, stop, and cease delivery of a product into this country if we found there to be a serial violation of this country's safety standards. And this is in regard to food products. Would such a system be helpful to CPSC as well?

Ms. NORD. Well, I think—yes, I think that we should be looking at tools whereby we can get to repeat offenders. But I think in the bill the provision that makes it a crime to sell recalled products is going to be very helpful.

Mr. BURGESS. It is helpful, but I am not sure it is good enough. Because all summer we heard recall after recall. It sounded like a recall emergency to me. I mean, you couldn't even turn on Lou Dobbs without them flashing something up there about this is recalled today and what is going to be recalled tomorrow.

And then we heard testimony in another part of one of our hearings where the stuff is just accumulating. And if it is stuff with lead in it and there is no plan to dispose of the stuff, it seems to me to be only reasonable to stop the stuff before it gets here. Once we decide that, OK, it is coming in, this is a repeated violation from the same country that has repetitively violated our laws in the past and let us just stop it, let us make the ships turn around in the middle of the sea if necessary and keep that stuff from coming into Long Beach, California.

Ms. NORD. Again, I agree with the goal that you are trying to get to. But what we need to make sure is that we can identify these products, and that is going to take place in a number of different ways. I just mentioned one. Another one is that Customs and Border Protection is working with us on their Automated Commercial Environment system so that we have got those records before the ship hits the dock, and that is what we need.

Mr. BURGESS. Do you have it before the ship leaves the port from Shanghai or wherever?

Ms. NORD. Yes.

Mr. BURGESS. So, right now, are you able to deny admission of an imported product from a specific country, manufacturer or shipper if there are repeated instances where they have violated our laws or they have shipped contaminated product to our country?

Ms. NORD. No, we would—

Mr. BURGESS. The answer is no?

Ms. NORD. Yes.

Mr. BURGESS. Yes, the answer is no.

Ms. NORD. The answer is no.

Mr. RUSH. Do you want to answer the question?

Ms. NORD. Well, we can prohibit importation if it violates a safety standard or if we have reason to think that it is going to be a dangerous product.

Mr. BURGESS. And are there any products recently where we have done that?

Mr. RUSH. The gentleman's time has expired.

The Chair now recognizes the gentlelady from—Mr. Markey just walked in. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Chairman Nord, in 1981, the Gramm-Latta bill passed, and it was the budget proposal of Ronald Reagan. And in it there was a little provision under the Phil Gramm part of the bill that actually took jurisdiction away from you over fixed-site amusement parks denying you an authority, which your agency had up until then.

Ms. NORD. Yes.

Mr. MARKEY. If we add language to this bill which gives you that authority back, will you exercise that authority to protect families as they go from State to State into amusement parks if there is an accident, to go in and investigate?

Ms. NORD. If you give us the authority, we will enforce it. But I would also request that you give us the resources to enforce it as well.

Mr. MARKEY. Well, you need more resources. There is no question about it. But I think you also need the authority. I think the resources will follow the authority, and so that would be my intention.

There was a little loophole built in here, OK? And there were no hearings. You had the authority. It had been working very well. And so that is kind of still a historical disgrace as far as I am concerned in terms of taking the authority away from your agency.

Now, let me ask this. When you get reports of potentially hazardous products from consumers, hospitals or companies, does CPSC enter them into a publicly available database so that people can search through them before they can buy the product?

Ms. NORD. Gosh, we are talking about well over half a million reports.

Mr. MARKEY. So the answer is no?

Ms. NORD. No, we don't.

Mr. MARKEY. The answer is no.

According to the Chicago Tribune, in 2005, the CPSC investigated less than 1 percent of all reports it got from emergency rooms. But once you do investigate and decide the public needs to be warned, can you immediately send out a press release?

Ms. NORD. If the Commission determines that there is an imminent hazard and we need to do that, we can.

Mr. MARKEY. Under the law, don't you have to give 30 days so a company can sign off?

Ms. NORD. We need to give 30 days to get comments on the fairness and accuracy of that. But under our imminent hazard provision, if we make that determination, we can proceed.

Mr. MARKEY. And can a manufacturer—

Ms. NORD. Or if we file a complaint, we can proceed.

Mr. MARKEY. Can a manufacturer actually sue CPSC to prevent you from issuing a warning at all?

Ms. NORD. If they can show that what we are proposing to put out there is inaccurate.

Mr. MARKEY. What if it is not inaccurate, can they sue you?

Ms. NORD. They can sue us. They probably wouldn't win.

Mr. MARKEY. So the Commission gets injury reports that it almost never investigates and that it also keeps secret from the public. And if the Commission does want to tell the public about a risk, it has to ask the company's permission to do so; and if the company objects, the Commission can be sued. That is, to me, just ludicrous; and I plan in this legislation to ensure that the legislation we report remedies that grave problem.

Commissioner Moore, could you deal with that question and whether or not it makes any sense to have that provision remain on the books?

Mr. MOORE. I know I missed your point. I'm sorry. Would you mind repeating the question?

Mr. MARKEY. I cannot hear you, sir.

Mr. MOORE. Would you mind repeating the question? I missed the question.

Mr. MARKEY. The question is, should we take that law off the books that requires the Commission to ask the company's permission before public information is made about a defect which the CPSC finds?

Mr. MOORE. I don't think it is unreasonable to let a company know what the charge is about to be. But, in the meantime, it depends on the imminence of the hazard. If it is something that is extremely imminent and it is very hazardous, we have to move forward. Companies ought to have an opportunity to respond to it.

Mr. MARKEY. Do you support the current law allowing companies to sue CPSC to prevent information from being disclosed?

Mr. MOORE. No.

Mr. MARKEY. You do not?

Mr. MOORE. No. Because I don't think that is in the public's interest in many cases.

Mr. MARKEY. That is very helpful to me. Thank you. I appreciate it.

I yield back the balance of my time, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentlelady from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

I want to express my appreciation for both of our witnesses coming today, because I do think that many of your suggestions are very helpful in helping us draft this legislation.

Chairman Nord, I want to talk to you briefly about this travel issue; and I just—I think that we can come to some kind of agreement on this because I have been on this committee now for a long time. And we have had people come in and they say, well, lawyers approved this and this has been the practice. But sometimes when that happens no one actually sat back and said, wait a minute, does this really pass the smell test even though people have been doing it?

And mores have changed in society, too. Members of Congress used to fly around on the tab of private industry, and now we have realized that that has the appearance of impropriety. So really my question to you—and it follows up on what Ms. Schakowsky—

Well, before I ask my question, I want to make one more point, which is, in fact, many other Government agencies do not allow regulated industries to pay for travel. For example, the Securities and Exchange Commission does not accept host-paid travel reimbursements from organizations regulated by the agency. The Food and Drug Administration also does not do that, and neither does the Federal Communications Commission.

So my question to you simply is, given the changing mores, given what is going on, if Congress gave the agency a budget for travel to inspect these important areas, to look at, to go to the toy show, to look at these things, if you had an independent budget to do that, I assume you would not object to us also banning host-paid travel, correct?

Ms. NORD. Of course.

Ms. DEGETTE. Thank you very much. I think that solves that situation right there.

I also want to ask you about these recalls, Chairman Nord. Because in my opening statement I am sure you heard me say that we had 150 recall notices for children's products and toys this year, 90 last year, and 60 going back to 2002. In your opening statement you had disputed those numbers. But the way we got those numbers was my staff went to the CPSC Web site and actually counted the number of recalls. And maybe it is because you are defining it more narrowly. You are only defining toys, and I am defining children's products and toys. And your staff is now nodding in agreement.

Ms. NORD. I am hearing from them.

Ms. DEGETTE. But the basic bottom line is that my point is that the recall notices for this category, children's products and toys, are going up. I think that it is likely because we have so many increasing imports coming in from abroad. Would you not agree with that?

Ms. NORD. No, I don't think I would in this respect. Our overall recalls inch up every year, and that is what you would expect them to do. And I looked at and stated in my statement toys—and we defined that very specifically—where we have seen the recalls go up is with respect to the lead paint violations.

Ms. DEGETTE. Right.

Ms. NORD. And that is where we have seen a big increase. That is because of what we have been doing.

Ms. DEGETTE. Do you think a large part of that is because we are getting an increasing percentage of our toys from abroad, in particular from China? Your staff—some of them are also nodding.

Ms. NORD. Indeed. The lead paint violations, by and large, were for Chinese-manufactured products.

Ms. DEGETTE. Right. And that is because the market has shifted, right?

Ms. NORD. Yes.

Ms. DEGETTE. So this is another point I'd like to make, which is I think that the best way to stop the kids from getting these—I like this one. This one just says stop; and this one has lead in it, too. This is one of the recalled Thomas the Tank Engine toys. The way to stop these toys from coming in is to prevent the lead in the first place. Because I am sure you will agree all the studies show a tiny fraction of recalled toys are actually ever returned. So would you agree with me that the way to stop this would be to prevent the toys from coming in in the first place, if we could?

Ms. NORD. Well, that is what we were doing with the recall. I mean, we have got a lead paint ban.

Ms. DEGETTE. Except for when you do a recall, the toys are already out in the market and in the homes. So if you could find some way—and I think you testified about this in your testimony. If you could find some way to prevent the toys from coming into the homes in the first place, then you wouldn't still have these toys in actually fairly sophisticated consumers' homes.

Ms. NORD. Well, my concern is that the provision in the bill is really not going to change that issue, because the lead that was coming in was above what was already violative of the law.

What we need to make sure is a couple of things: First of all, the certification authority which I have asked for which we do not have now with respect to these kinds of toys would be incredibly helpful, because what it would do is force companies to really look at these things before they are marketed.

Ms. DEGETTE. Right. That is what I am saying.

Ms. NORD. Then we are saying the same thing.

Ms. DEGETTE. Then you agree. OK, great, thank you.

Mr. RUSH. The Chair recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Chairwoman Nord, I want to follow up on something that Congressman Markey was pointing out. This 30-day requirement, unless there is some exigent circumstances, that is mandatory, right? The 30-day notice that the manufacturers or whoever is responsible for bringing the toy in—

Ms. NORD. No. Basically what the statute says is that before we disclose information that identifies a manufacturer and a product specifically, we give the manufacturer 30 days notice to make sure—to verify the accuracy of what we are going to put out there.

Mr. GONZALEZ. Do you really need 30 days for that?

Ms. NORD. No, of course you don't.

Mr. GONZALEZ. Do you have discretion to reduce the time period?

Ms. NORD. Yes, we do.

Mr. GONZALEZ. You do?

Ms. NORD. We do. Your bill changes that from 30 days to 15 days and then gives us discretion as well.

Mr. GONZALEZ. So you agree with that?

Ms. NORD. Yes.

Mr. GONZALEZ. So it seems to me that—if they protest or whatever, they can actually sue you at that point?

Ms. NORD. They can seek to stop the release by going to court.

Mr. GONZALEZ. So they can sue you prior to determination?

Ms. NORD. Yes. They would go into court—

Mr. GONZALEZ. If you do make a determination, they can sue you after the determination is made?

Ms. NORD. I am sorry?

Mr. GONZALEZ. I am saying that prior to you making any type of determination, the process of arriving at a decision, they can come and legally file suit contesting this process, in essence, that you are going to identify them as a manufacturer wherever it is of potentially dangerous toy—I am trying to get it straight as to where—at what point in time can a manufacturer come in and sue you? From the start the process?

Ms. NORD. We would let them know what information we would disclose. They would come back and say it is inaccurate. We would say, apparently, under your scenario, we are still going to release it. At that point, they could then go into court and seek a temporary restraining order, or whatever is the appropriate legal device to try to stop it.

Mr. GONZALEZ. So they can sue you prior to you making the determination public?

Ms. NORD. Yes, assuming the court is willing to hear the case. That is a court procedure, not our procedure.

Mr. GONZALEZ. Let's say they don't file a lawsuit in that process but then you make that determination, you issue whatever you are going to issue regarding the danger and the manufacturer and so on, and they disagree that you should have done that. Can they then come back and do anything after the fact?

Ms. NORD. They would be suing—or they would be protesting our action in releasing the documents. So at that point I don't think there would be any cause of action. But, frankly, I would really like my lawyers to respond to these questions.

Mr. GONZALEZ. Well, it leads me up to something that you have in your testimony. Legislation also includes a more than five-fold increase in the cap on CPSC's civil penalties.

Ms. NORD. Yes.

Mr. GONZALEZ. So we have increased the exposure in the way of dollar penalties to these individuals, these companies.

Ms. NORD. Yes.

Mr. GONZALEZ. And you have said this is a reasoned approach to increasing the agency's civil penalties and strengthening the agency's hand.

Ms. NORD. Yes.

Mr. GONZALEZ. What troubles me is the following: Without forcing the CPSC to respond to a flood of litigation—what you are saying is that it is a reasonable increase. But, if we went beyond it, you would think there would be all this protest from the manufacturers and you would have all these lawsuits. Is that what you mean?

Ms. NORD. If could I expand on my answer for just a moment.

Mr. GONZALEZ. Sure.

Ms. NORD. The agency imposes civil penalties in 99 percent of the times for failure to report to us potential problems. That is where we use the civil penalty authority. Increasing it in the way that the bill does in the way the House has already passed it would, I think, give us a tool we need. But what our compliance officers are concerned about is that if it were increased many, many, many times, that companies would basically flood us with data so that the trees would get lost in the forest and that way we would not be able to do our job. And that is what—

Mr. GONZALEZ. It would flood you with litigation is your testimony?

Ms. NORD. It would flood us with data—

Mr. GONZALEZ. In the context of a lawsuit?

Ms. NORD. No, no, of course not.

Mr. GONZALEZ. Respond to a flood of new litigation. That is what you are saying.

See, what I am saying is, don't worry so much about a flood of new litigation. If you have tools and penalties that get people's attention, then that is all right. I am just concerned about a flood of new litigation, and I just don't want any hesitancy on the part of the Commission to be tough and not be fearful of litigation.

Ms. NORD. Well, what I am concerned about there, sir, is that if the exposure is \$100 million or more, people are not going to sit and work with us. Instead, they are going to fight us. So our resources are going to be diverted into court cases, as opposed to

dealing with companies to try to resolve disputes; and I just don't think that would be good——

Mr. GONZALEZ. I am going to disagree with you. Because I think when the penalties are out there and they are stiff, it gets people's attention. That is the way the system has worked in this country for over 200 years.

Mr. RUSH. The gentleman's time has expired.

The Chair recognizes the gentlelady from Oregon.

Ms. HOOLEY. Thank you, Mr. Chairman.

I just need some clarification from you. I was talking to a fairly large chain store, and I asked them about what goes on their shelves and how do they make sure that the toys are safe and the products safe. And they went on to tell me how they go to the manufacturer, wherever the manufacturer is, and ensure that they are safe before they even reach our shores and reach their shelves. So they have full confidence that what they are selling is safe.

So my question is, if a chain store can do that, can your agency do that to test these toys? I mean—and I am, as you know, very concerned about the lead in toys for children. Can your agency make sure that these toys are tested before they leave the country where they were manufactured so we don't even have to get into the recalls?

I mean, as you have heard said today, if a toy is recalled, the problem is a parent doesn't really know—it may be sitting, you know, in an old box where, if you have a lot of kids, you stuff toys over here and save them for the next child. So can we stop them from coming into the country in the first place?

Ms. NORD. Our agency does not have premarket testing and certification requirements. I have asked the Congress to include legislation that would give us the authority to require that companies certify that they are complying with existing safety standards. If companies did that, that would then force the testing to occur; and I would like to see that authority in this legislation.

Ms. HOOLEY. Do you think the bill as it is currently written has that authority?

Ms. NORD. No, it does not. I would like to see that authority.

Ms. HOOLEY. OK. Second question I have—so there is a way to do that if we give you the authority to do that?

Ms. NORD. Certification authority would be very helpful.

Ms. HOOLEY. OK. The second question I have is, you have testified in the Senate, you have testified before in this committee, and I have heard sort of this—well, we don't need the money; well, we need the money; well, we don't need—so I just need to know, where are you in terms of what do you need to do the job to the very best of your ability? I mean, I understand that it is difficult to go out and hire 400 people or 200 people at a time. But what are we talking about? What is the amount of money that it is going to take for to you really do your job?

Ms. NORD. I have said repeatedly, and I will say it again, I would welcome more resources. I want more money.

Now, with respect to the specifics, what we did when this committee passed out the previous legislation is our administrative staff sat down and priced it out, if you will. What we found was, in order to comply with that, we are going to need—I believe it was

around—someplace between 35 and 38 additional staff and about \$6 million additional. I did the same thing with the Senate bill, and that was much higher. We will do that with this bill as well, and we will do it very quickly.

Ms. HOOLEY. OK. And then the last question I have for you is, again, when you were testifying in front of the Senate committee that you said you opposed the whistleblower provision; and you talked about this would drain resources. Do you have any economic data on that? And, if so, what is it? And is there any whistleblower provisions that you would, in fact, be for?

Ms. NORD. One observation I would make to you, just as an aside, is after I sent that letter up to the Senate expressing my concerns there, the Senate did amend the provision. So, to a certain extent, they attempted to listen. I continued to be very concerned about it. And what I would like to do, if I might, is submit a memorandum to you that outlines my concerns in more detail, including the economic concerns.

Ms. HOOLEY. OK. And is there a whistleblower provision that you would support?

Ms. NORD. I would really need to see the language. I mean, I can't—

Ms. HOOLEY. If you say you don't like what was in the Senate, so—and you are going to send me the economic data, which I would really appreciate, I guess as just opposing something, I would also love to know what you might support.

Ms. NORD. Again—

Ms. HOOLEY. Just send me what—I mean, just send me what you think you would support.

Mr. RUSH. The gentlelady's time is up.

Ms. HOOLEY. Thank you, Mr. Chair.

Mr. RUSH. The Chair now recognizes the chairman of the full committee, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you.

Chairman Nord, first, thank you for having made your staff available to the committee while we wrote the legislation. They have been very helpful.

I am going to submit to you a letter which I would ask unanimous consent, Mr. Chairman, be inserted in the record at the appropriate place.

Mr. DINGELL. Madam Chairman, it will be about the adequacy of the funds authorized to CPSC in H.R. 4040 and also the number of full-time equivalents and whether they would be adequate under the legislation and within what time frame you could submit those, you could put those people to work to do the business that has to be done down there.

Could you give us your comments about what would be the practical effect of having CPSC return to a five-commissioner body? As you know, you are now condemned to functioning with two. It is my view that this would confer significant benefits in additional efficiency, competence and your ability to carry out your mission. Am I correct in that?

Ms. NORD. I don't have any information about the relative merits. The Appropriations Committee did look at that in the late 1980s, early 1990s and reached an opposite conclusion which they

expressed pretty strongly in the committee report language. So I really can't address that beyond saying that.

Mr. DINGELL. Now, Madam Chairman, would you share with us here your thoughts on the provisions in H.R. 4040 that would permit the CPSC to share information pursuant to section 6 of the Consumer Product Safety Act with foreign governments? Since we now live in a world of global commerce, do you agree that it makes sense under controlled conditions to share this information with other countries so that they and we might work better to ensure the public health and safety?

Ms. NORD. I am pleased to see the provision in this bill. It is something I requested back in July.

Mr. DINGELL. Now, Madam Chairman, do you have any concerns that certain governments might not keep the information shared under this framework confidential?

Ms. NORD. I think that the committee has addressed this in the provision.

Mr. DINGELL. That does constitute a problem, doesn't it?

Ms. NORD. It could, yes.

Mr. DINGELL. Do you have any specific countries that would be of particular concern to you?

Ms. NORD. I am not—

Mr. DINGELL. You don't think you would like to answer that at this time?

Ms. NORD. Thank you.

Mr. DINGELL. I will respect that. Will it be useful for us to negotiate a memorandum of understanding with the European Union pertaining to consumer product safety?

Ms. NORD. We already have one.

Mr. DINGELL. Do you need authority to do that?

Ms. NORD. No, we have already done that.

Mr. DINGELL. OK. Now is there any reason why a firm should not provide CPSC with information concerning contractors and subcontractors that it uses to produce a consumer product for sale in the United States?

Ms. NORD. I have not thought that through. I don't see why not.

Mr. DINGELL. Let's take a look at China, where we buy all kinds of stuff from the Chinese. We don't have the vaguest idea of who is producing that. We don't have the vaguest idea of what safety steps are being taken. Usually, the stuff is not scrutinized by a Chinese Government agency at any level of government, nor is it scrutinized indeed here at home. You have virtually nobody at the gates to see who is sending what in and whether it is safe or not. And so is there any reason why you should not be able to compel the importers to provide information with regard to contractors and subcontractors that are used to produce consumer products for sale in the United States?

Ms. NORD. I think that makes sense. And what I am trying—why I am hesitating is that I believe that that was part of our agreement with the government of China, but I would like to confirm that.

Mr. DINGELL. This would help you with regard to recalls, and it would probably in that particular alone serve to protect the public health and safety, would it not?

Ms. NORD. Again, traceability is a very key concept; and it is something that we are working through.

Mr. DINGELL. Now, Madam Chairman, H.R. 4040 amends section 15 of the Consumer Product Safety Act to permit CPSC to review and improve companies' plans for mandatory consumer product recalls.

Ms. NORD. Yes.

Mr. DINGELL. In your opinion, is this a good idea?

Ms. NORD. Absolutely.

Mr. DINGELL. Would you tell us why, please?

Ms. NORD. Because I think it is absolutely imperative that we design recalls that address—reach the most consumers in the most effective way.

Mr. DINGELL. Could you cite examples of product recall plans that might have benefited otherwise from having been reviewed by CPSC before? I will let you submit that for the record, if that would be your wish.

Ms. NORD. Thank you very much.

Mr. DINGELL. I would ask that the record remain open for that purpose, Mr. Chairman.

Mr. RUSH. So ordered.

Mr. DINGELL. Mr. Chairman, I notice that I am 33 seconds over time. Thank you for your courtesy and thank you for being here.

Mr. RUSH. The Chair now recognizes the gentleman from Arkansas, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman; and, Chairwoman Nord, thank you for joining us here today.

I, like most American citizens, believe that we have a Consumer Product Safety Commission to ensure the safety of products for consumers. It seems to me, based on a number of decisions and the types of recalls made, that the Consumer Product Safety Commission has become more of a commission to protect big business, a commission to protect big corporations, many of which are not even located or employing Americans.

I just want to ask you—and I will give one example. I could give many. Just October 25—this is fairly recent. This is November 6—October 25, "Serious head injuries prompt recall of Bumbo Baby Sitter seats. New warnings and instructions to be provided to consumers."

This Bumbo Baby Sitter seat, there is about a million of them out there. They are made in South Africa. They are not made by American workers. And the hazard, according to your agency, if the seat is placed on a table, countertop, chair, or other elevated surface, young children can arch their backs, flip out of the Bumbo seat and fall onto the floor, posing a risk of serious head injuries.

To date, the Consumer Product Safety Commission has received 28 reports of young children falling out of the Bumbo Baby Sitter seat, including three skull fractures which occurred when children fell out of chairs that had been placed on tables.

I am somewhat familiar with this, because my colleague from Arkansas, Congressman Vic Snyder, has a young child, Penn; and when Penn was less than a year old, they purchased this Bumbo Baby Sitter seat. The picture on the box illustrates that it is something you should buy if you want to set your young child on the

kitchen countertop, the kitchen island, many people refer to it as, while you are cooking, while you are working in the kitchen. That was the picture depicted on the box to market this thing, the Bumbo Baby Sitter seat.

And Penn fell out of it. Thank God, he didn't fall off the kitchen island. Instead, he smushed his face into the towel on the kitchen island. He wasn't seriously injured. No telling what could have happened had he fallen all the way to the floor.

But Congressman Snyder's concern and my concern is that this product was not recalled. They saw it on the news; and, like many Americans, they assumed it had been recalled. They went back to where they bought it from, and the guy at the store was very nice and very courteous, and he explained to them, oh, no, the Consumer Product Safety Commission did not recall the product. The Consumer Product Safety Commission recalled the box.

Now that is not exactly what you did. But you basically—here is your remedy. The box is what consumers were buying. They were buying it for its intended purpose, and now they are told they can't use it in that way. But the product was not recalled, which to me was siding with big business instead of siding with the consumer.

When you go out to the store and you buy something, you buy it based on what the box tells you it will do. It was bought for one thing, and now you are telling folks it can be used for another thing.

Here is the remedy. Consumers should never use the infant seat on a table, countertop, chair or other elevated surface. Consumers can contact Bumbo to obtain new warning labels, stickers and instructions free of charge. The new warning label will state, "Warning: Prevent falls. Never use on any elevated surface. Consumers should use the Bumbo seat at ground level but never leave a child unattended."

Twenty-eight injuries, three skull fractures. There is a lot of Penns out there—a million of them—that have one of these; and so the Consumer Product Safety Commission is now telling parents that when a child is in his Bumbo seat on a table, countertop, chair or other elevated surface, the young child may very well arch their backs and flip out of the Bumbo seat. But apparently if the Bumbo Chair is on the floor, something happens to the child where they are no longer able to arch their backs and flip out of the Bumbo seat onto the floor.

We are talking about young children. We are talking about infants. And yes, if they fall from a kitchen island it could very well kill them—28 injuries, three skull fractures. But what about the children that are simply sitting in this on a hardwood floor or on a concrete patio? So are you saying that if they are sitting on the hardwood or concrete patio, something is going to keep them from arching their backs or flipping out of the seat?

I guess what I am getting at is, what type of tests—and I am assuming there were enormous testing done by the Consumer Product Safety Commission before siding with Bumbo International in South Africa. What kind of tests were done to ensure that if a child does very well arch their back and flip out of the Bumbo seat onto the concrete patio or onto a hardwood floor that no injury whatsoever is going to occur?

Ms. NORD. The issue with the Bumby baby seat was one whereby the instructions that were given for use—and that is that the company said in their instructions, do not use this on an elevated surface; nevertheless, they put it on the box. And that is absolutely wrong, and it needs to be corrected, and that is what we were doing.

The injuries that occurred happened when the parent put the child in the seat and the child wiggled or came out of the seat and fell off the elevated surface onto the ground. That is the injury. And that is why we took the action we did.

You cannot have a situation where a company says in its product instructions, don't use this on an elevated surface, but then has packaging that shows that warned-against behavior. I mean, we can't allow that; and that is why we took the action we did.

Mr. ROSS. Which was simply slapping them on the wrist, rather than recalling the product.

Ms. NORD. That is not correct, sir.

Mr. RUSH. The gentleman's time has expired.

The Chair and the members of the subcommittee really thank the two witnesses for their participation today. You have been very, very generous with your time, and we certainly appreciate it, and we look forward to working with you into the future.

The committee now will ask that this panel disassemble and that the second panel please assemble.

We have as a member of the second panel Ms. Kathrin Belliveau. She is the director of public safety and regulatory affairs for Hasbro Inc., with corporate headquarters in Pawtucket, Rhode Island. Hasbro is the No. 2 manufacturer after Mattel of toys and games in the world, with annual sales of more than \$3 billion. Its toys and brands include Playskool, Tonka, Super Soaker, Milton Bradley and Parker Brothers.

Sitting next to Ms. Belliveau is Dr. Dana Best, M.D., M.P.H., American Academy of Pediatrics. Dr. Best is on the faculty of the George Washington University School of Medicine and attends in pediatrics at Children's National Medical Center here in our Nation's capital. Her research focuses on lead exposure of pregnant women and children living in the District of Columbia.

Sitting next to Dr. Best is Mr. Lane Hallenbeck, the vice president, accreditation services, American National Standards Institute, ANSI. ANSI is a not-for-profit organization that accredits national standards to developing organizations and improves American national standards. It brings together organizations from both the private and public sector dedicated to furthering U.S. and international voluntary consensus standards and conforming to assessments.

Sitting next to Mr. Hallenbeck is Mr. Alan Korn, public policy director and general counsel, Safe Kids Worldwide. Safe Kids Worldwide is a global network of organizations whose mission is to prevent accidental childhood injury, the leading killer of children 14 and under. Within the United States, Safe Kids USA consists of more than 300 coalitions nationwide, implements public outreach and awareness campaigns, conducts hands-on grassroots activity and works to make childhood injury prevention a public policy priority.

Sitting next to Mr. Korn is Mr. Joseph M. McGuire, who is the president of the Association of Home Appliance Manufacturers, AHAM, tested on behalf of the National Association of Manufacturers. AHAM is the United States-based trade association of the home appliance manufacturing industry. Its members include the manufacturers of major portable and floor care home appliances and the companies who supply and service these manufacturers.

And next to Mr. McGuire is Ms. Rachel Weintraub. She is the director of product safety and senior counsel for the Consumer Federation of America. The Consumer Federation of America is a not-for-profit organization, association of 300 consumer groups, with a combined membership of over 50 million people. CFA was founded in 1968 to advance consumer interests through advocacy and education.

We will now recognize Ms. Belliveau for 5 minutes of opening statements.

STATEMENT OF KATHRIN BELLIVEAU, DIRECTOR, PRODUCT SAFETY AND REGULATORY AFFAIRS, HASBRO, INC.

Ms. BELLIVEAU. Thank you, Mr. Chairman and members of the subcommittee. Thank you for giving me the opportunity to provide testimony on H.R. 4040, the Consumer Product Safety Modernization Act of 2007. On behalf of Hasbro, I would like to express our appreciation to the members of the committee and your staffs for your bipartisan efforts to address consumer product safety issues.

Hasbro is a worldwide leader in the design and manufacture of toys and games that are enjoyed by children and families both here in the U.S. and abroad. Our widely recognized brands include Playskool, Tonka, Milton Bradley, Transformers, Nerf and Parker Brothers.

As Director of Product Safety and Regulatory Affairs at Hasbro and as a mother of two young girls, no issue is more important to me than the safety of our toys and of the children who enjoy them. Our product safety and quality assurance systems are based on a comprehensive and stringent review process at every stage of product development and production. We require that all of our products meet or exceed all applicable national and international standards as well as our own internal often more stringent Hasbro standards. And to ensure compliance with these standards, Hasbro's testing and quality control procedures have always included independent, third-party testing of our products.

While Hasbro has not been impacted by the recent lead paint recalls, we have taken additional steps to confirm that our products and systems and procedures are being adhered to and that we are doing everything possible to make the safest toys for our children. We have checked 100 percent of our vendor base, and we have carried out over 1,000 additional confirmatory product tests over and above all of the tests that are routinely carried out by Hasbro, our retailers and third parties in accordance with the testing program we have had in place for years. We have also stepped up inspections of all factories manufacturing Hasbro products, both here in the U.S. as well as overseas.

While nothing is more important to Hasbro than the safety of our toys, we recognize that no system is perfect and that, when it

comes to a child's safety, we must continuously be vigilant. We are constantly looking to improve and learn from every situation where there is an issue related to a toy's safety, and we support congressional efforts to equip regulators with the resources and tools to ensure that our industry as a whole produces the safest possible products for our children.

H.R. 4040 significantly tightens the regulation of toy safety. As you know, it sets a high bar, but by working closely with industry and others, the committee has crafted a framework that is workable while enhancing toy safety. The heart of that framework is a new lead content standard and a mandatory third-party testing regime.

This legislation creates a new and significantly lower limit on the total amount of lead that can be in any accessible part of the toy, and this limit goes down over time. As the committee knows, Hasbro supports reducing the current total lead content standard, although not to the levels currently envisioned in the legislation.

The legislation also breaks new ground by proposing for the first time in Federal law a limit on soluble lead. We believe that, when combined with an appropriate total lead standard, the soluble limit in the bill will further enhance protection for children by limiting the amount of lead that a child can be exposed to. Therefore, we would urge the committee to consider combining a workable total lead standard with a 90 part per million soluble limit.

Hasbro supports mandatory third-party testing. Working with the Toy Industry Association, we have been seeking to develop a rigorous third-party testing system. This system will include vendor audits, additional process controls and product testing. Products will be reviewed for conformity not only with the mandatory standards but the voluntary standards as well. In Hasbro's view, the proposed legislation strikes the right balance by carefully defining independence and by requiring that the testing entity be accredited in accordance with an accreditation process established or recognized by the CPSC.

The bill also includes severe civil penalties for failure to report on a timely basis a potential product safety hazard to the CPSC. In light of these significant penalties, we think the law would benefit from more precise definitions covering responsibility of manufacturers to provide information to the CPSC. We also think that a standard of intent should be included in the bill, and we look forward to working with the committee on these issues.

We have had the committee draft for a little over 4 days, and we are still completing a review of some of its provisions. We do have questions on several other provisions that we hope to further explore with you and the staff.

Finally, let me again say that we at Hasbro take the safety of children very seriously; and we look forward to working with you on these and other issues as this legislative process unfolds. Thank you again for the opportunity to appear today.

[The prepared statement of Ms. Belliveau follows:]

STATEMENT OF KATHRIN BELLIVEAU

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While nothing is more important to Hasbro than the safety of our toys, we recognize that no system is perfect and that when it comes to a child's safety, we must continuously be vigilant. We are constantly looking to improve and learn from every situation where there is an issue related to a toy's safety. And we support Congressional efforts to equip regulators with the resources and tools to ensure that our industry as a whole produces the safest possible products for our children.

Mr. Chairman, H.R. 4040 significantly tightens the regulation of toy safety. As you know, it sets a high bar, but by working closely with industry and others, the committee has crafted a framework that is workable while enhancing toy safety. The heart of that framework is a new lead content standard and a mandatory third party testing regime.

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Hasbro supports mandatory third party testing. Working with the Toy Industry Association, we have been seeking to develop a rigorous third party testing system. This system will include vendor audits, additional process controls, and product testing. Products will be reviewed for conformity with both mandatory as well as voluntary standards. In our view, the proposed legislation strikes the right balance by carefully defining independence and requiring that the "testing entity" be "accredited in accordance with an accreditation process established or recognized by the Commission."

The bill also includes severe civil penalties for failure to report on a timely basis a potential product safety hazard to the CPSC. In light of these significant penalties, we think the law would benefit from more precise definitions covering the responsibility of manufacturers to provide information to the CPSC. We also think that a standard of intent should be included in the bill. We look forward to working with the committee on these issues.

Mr. Chairman, we have had the committee draft for a little over 4 days. We are still completing a review of some of its provisions. We do have questions on several other provisions that we hope to explore further with you and the staff.

Finally, let me again say that we at Hasbro take the safety of children very seriously. We look forward to working with you on these and other issues as the legislative process unfolds.

Thank you again for the opportunity to appear today.

Ms. SCHAKOWSKY [presiding]. Dr. Best.

**STATEMENT OF DANA BEST, M.D., AMERICAN ACADEMY OF
PEDIATRICS**

Dr. BEST. Thank you, Madam Chairwoman. Good morning—or afternoon now. Thank you for the opportunity to testify today on H.R. 4040, the Consumer Product Safety Modernization Act. My name is Dr. Dana Best, and I am proud to represent the American Academy of Pediatrics.

H.R. 4040 represents an important step towards reducing children's exposure to lead in consumer products. First and foremost, it establishes uniform Federal standards for lead content where none have existed. H.R. 4040 allows manufacturers to choose between satisfying standards either for total lead or soluble lead in children's products.

The legislation also reduces the allowable lead content of paint from the current level of 600 parts per million to 90 parts per million.

The AAP further appreciates the fact that this legislation requires lead testing for products designed or intended for use by or with children up to the age of 12 years.

The AAP congratulates the bill's sponsors on making significant strides toward improving the safety of children's products. In that cooperative and constructive spirit, the AAP would like to recommend 5 changes that would further strengthen this proposal:

Number 1, the standards for lead exposure can and should be further reduced to AAP's recommendation of 40 parts per million in all parts of children's products.

Number 2, H.R. 4040 should define a standard test for soluble lead. The results of lead tests on products can vary considerably depending upon the methodology used to assess solubility. In order to ensure that this is a meaningful standard that can be enforced consistently, the CPSC should be directed to develop a rigorous test protocol with appropriate opportunities for public comment. In addition, the lead standard that drops from 600 to 100 parts per million should state explicitly that it refers to total lead.

Number 3, some of the timetables in H.R. 4040 should be accelerated. The standard of no more than 100 parts per million total lead in children's products should go into effect earlier, preferably within no more than 2 years. Additionally, no timetable is specified for the CPSC to engage in the necessary rulemaking to establish the standard of 90 parts per million soluble lead. The CPSC should be instructed to engage in this rulemaking on a set timetable, such as within 6 months to 1 year. In the meantime, the alternative standard for total lead should apply to all children's products.

Number 4, given that there is no compelling reason to include lead in children's products, lead content should be banned regardless of accessibility.

Number 5, Children's products should be defined to cover those designed or intended for use of children up to age 12 years not only with regard to lead testing but related to other CPSC standards as well. The bill's limitation of other standards to products designed or intended for children under the age of 6 years fails to protect children age 6 to 12 years from hazards such as choking, sharp edges, amputation risk, caustic chemicals, and electrical shock. In addition, the legislation should not qualify this definition by requir-

ing that it apply to products designed “primarily” for children of a certain age. The word “primarily” should be deleted from the bill.

In conclusion, the American Academy of Pediatrics praises H.R. 4040, the Consumer Product Safety Modernization Act, as an important advance in protecting our Nation’s children from the pernicious threat to health and development posed by lead. We look forward to continuing our dialogue and will work together towards our mutual goal of improving the health and well-being of all children.

Thank you.

Ms. SCHAKOWSKY. Thank you.

[The prepared statement of Dr. Best follows:]

TESTIMONY OF DANA BEST, M.D.

Good morning. Thank you for the opportunity to testify today before the Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection on H.R. 4040, the Consumer Product Safety Modernization Act. My name is Dana Best, MD, MPH, FAAP, and I am proud to represent the American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults. I am an Assistant Professor of Pediatrics at the George Washington University School of Medicine and an attending physician at Children’s National Medical Center in Washington, DC. I also serve on the AAP’s Committee on Environmental Health, which is the primary body within the AAP that handles lead issues.

On September 20, I had the privilege of testifying before this subcommittee to present the AAP’s recommendations regarding the lead content of toys and other children’s products. Based upon the overwhelming scientific evidence of the serious danger that lead poses to children and the lack of a compelling need to include lead in children’s products, the AAP recommended banning lead above trace amounts in children’s products. The AAP advised the subcommittee to define a trace amount as no more than 40 parts per million. The AAP further recommended that a children’s product be defined as one used by or with children under the age of 12 years in order to provide a standard that protects the most children possible throughout periods of rapid brain development.

H.R. 4040 represents an important step toward reducing children’s exposure to lead in consumer products. First and foremost, it establishes uniform federal standards for lead content where none have existed. Current regulations permit most products to contain unlimited amounts of lead in any component other than paint. The proposed legislation will ensure that children’s products must be tested and conform to limits on lead content.

The legislation reduces the allowable lead content of paint from the current level of 600 parts per million to 90 parts per million. As members of the subcommittee are undoubtedly aware, millions of toys and children’s products have been recalled this year due to violations of the current lead standard of 600 parts per million. That standard, established in 1978 and based on an outdated understanding of the harms of lead poisoning, should be lowered significantly. H.R. 4040 sets a standard of lead in paint that is approximately one-seventh of the current allowable level. This step will greatly enhance the safety of products and homes.

H.R. 4040 allows manufacturers to choose between satisfying one of two standards for lead content in children’s products. Manufacturers may choose to limit total lead content to a level that is initially set at 600 parts per million and is reduced to 250 parts per million after two years, then to 100 parts per million another two years later. Alternatively, manufacturers may choose to limit soluble lead content to 90 parts per million. The standards of 90 and 100 parts per million are significant goals which, if met, will measurably reduce exposure to lead in children’s products.

The Academy commends the bill’s authors for establishing a single standard for lead in all children’s products, rather than attempting to establish different classes of products with varying standards. It is critically important that all children’s products be held to the same aggressive standards to protect children’s health and assure parents that all children’s products are safe.

The AAP further appreciates the fact that this legislation requires lead testing for products designed or intended for use by or with children up to the age of 12 years. Children’s brains develop rapidly throughout childhood, and significant damage can

occur from lead exposure at any point during this time. This provision represents a vital protection for child health.

The AAP congratulates the bill's sponsors on making significant strides toward improving the safety of children's products. In that cooperative and constructive spirit, the AAP would like to recommend five changes that would further strengthen this proposal:

The standard for lead exposure can and should be further reduced to AAP's recommendation of 40 parts per million in all parts of children's products. We can reduce or prevent damage to children's brains by lowering the lead standard to AAP's recommended level.

H.R. 4040 should define a standard test for "soluble" lead. The results of lead tests on products can vary considerably depending upon the methodology used to assess solubility. Further, the relationship of solubility to bioavailability and absorption will vary by method used to determine solubility. In order to ensure that this is a meaningful standard that can be enforced consistently, the Consumer Product Safety Commission should be directed to develop a rigorous test protocol with appropriate opportunities for public comment. In addition, the lead standard that drops from 600 to 100 parts per million should state explicitly that it refers to total lead.

Some of the timetables in H.R. 4040 should be accelerated. While the standard limiting lead in children's products to 100 parts per million is laudable, it does not take effect until four years after enactment. The standard should go into effect earlier, preferably within no more than two years. Additionally, no timetable is specified for the Consumer Product Safety Commission to engage in the necessary rulemaking to establish the standard of 90 parts per million soluble lead. The CPSC should be instructed to engage in this rulemaking on a set timeframe, such as within six months to one year. In the meantime, the alternative standard for total lead should apply to all children's products.

Given that there is no compelling reason to include lead in children's products, lead content should be banned regardless of accessibility. If an accessibility standard is included, it should state explicitly that paint, coating or electroplating do not render lead inaccessible. The Commission should establish parameters for this exception by rulemaking and review them periodically, especially as lead-free alternatives become available.

Children's products should be defined to cover those designed or intended for use of children up to age 12 years not only with regard to lead testing, but related to other CPSC standards as well. The bill's limitation of other standards to products designed or intended for children under the age of 6 years fails to protect children age 6 to 12 years from hazards such as choking, sharp edges, amputation risk, caustic chemicals, and electrical shock. In addition, the legislation should not qualify this definition by requiring that it apply to products designed "primarily" for children of a certain age. The word "primarily" should be deleted from the bill.

In conclusion, the American Academy of Pediatrics praises H.R. 4040, the Consumer Product Safety Modernization Act, as an important advance in protecting our nation's children from the pernicious threat to health and development posed by lead. We look forward to continuing our dialogue and our work together toward our mutual goal of improving the health and well-being of all children.

Ms. SCHAKOWSKY. Mr. Hallenbeck.

STATEMENT OF LANE HALLENBECK, VICE PRESIDENT, ACCREDITATION SERVICES, AMERICAN NATIONAL STANDARDS INSTITUTE

Mr. HALLENBECK. Thank you, Madam Chair.

As noted, my name is Lane Hallenbeck; and I am Vice President of Accreditation Services for the American National Standards Institute, or ANSI. My responsibilities at ANSI include directing accreditation programs that assess the competence of third-party conforming assessment bodies. In lay terms, this means I work with organizations that determine whether products, services, systems or people comply with requirements found in voluntary standards or mandatory regulations.

ANSI is coordinator of the U.S. private-sector-led and public-sector-supported standards and conformity assessment system. In this

role, we work with a broad range of industries. We speak as the U.S. voice in standardization forums around the globe; and, through our network of members, we represent the interests of more than 125,000 organizations and companies and 3½ million professionals worldwide.

During its 9-year history, the Institute has demonstrated a unique ability to bring together diverse stakeholders in a spirit of cooperation and collaboration. Among other things, we have successfully teamed with the Council of Better Business Bureaus to tackle identity theft, partnered with the 9/11 Commission and the DHS to address some urgency preparedness in homeland security, and helped Health and Human Services to develop a secure electronic health record for every American. In all our efforts, protecting the safety of consumers has been of paramount importance. It is a key element of the Institute's mission, and we are committed to its implementation.

Earlier this year, the Toy Industry Association asked ANSI to help them design a program of testing inspection and education that could be implemented across the industry's global supply chain. ANSI responded with a 3-point proposal.

First, we would help the toy industry analyze existing standards, technical regulations and conformity assessment programs. Next we would form technical working groups and coordinate their efforts to design testing and inspection methodologies. And, finally, we would recommend steps to improve compliance activities throughout the toy industry's global supply chain.

TIA accepted this proposal, and I along with several ANSI colleagues have begun working with the Association and its members 2 months ago. Almost immediately we agreed that two criteria were necessary for success in the global marketplace: common product requirements and harmonized test methods. Our solutions will draw from a toolbox of conformity assessment resources, not just testing and inspection but also systems auditing, accredited certification programs and, of course, education and training.

The program we are developing will be committed to improving product safety, not just reducing the number of recalls. It will be sustainable and forward looking to anticipate and prevent problems yet unknown. It will be considerate of all types of suppliers, regardless of size or location; and it will support the concept of one standard, one test accepted everywhere.

We are making great progress. There are three groups on process control, testing and reporting and design; and they are meeting on a weekly basis. During biweekly teleconference, they report to a steering committee I Chair that is comprised of working group leaders and representatives of consumers, the U.S. Government and staff from both ANSI and TIA.

Recommendations from the working groups and steering committee are targeted for broad review and approval, including a public comment period and formal review and endorsement by TIA before year end. Implementation is expected to begin in early 2008.

Government, industry and consumers need to work at a single purpose if we are to restore marketplace confidence in imported goods. Regulatory bodies that lead oversight and regulation for consumer health and safety issues will not be able to handle the work-

load alone. ANSI is proud to help coordinate the public-private partnership.

Thank you, and I welcome your questions.

[The prepared statement of Mr. Hallenbeck follows:]

STATEMENT OF LANE HALLENBECK

The American National Standards Institute (ANSI) is a private non-profit organization whose mission is to enhance U.S. global competitiveness and the American quality of life by promoting, facilitating, and safeguarding the integrity of the voluntary standardization and conformity assessment system. ANSI's membership is comprised of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations. Through this network of members, the Institute represents the diverse interests of more than 125,000 companies and organizations and 3.5 million professionals worldwide.

ANSI is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum (IAF). A memorandum of agreement between ANSI and the Commerce Department's National Institute of Standards and Technology outlines a mutual understanding of the roles of each organization. This includes ANSI's recognition as the official U.S. member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

Since its formation, ANSI has been coordinating the development of standards-based solutions to support accident prevention and improve worker and consumer safety. Today, 10% of the approximately 10,000 approved American National Standards (ANS) currently available address issues that help to protect the workforce, consumers and the general public.

Protecting the safety of consumers is of paramount importance to ANSI. It is a key element of the Institute's mission. ANSI works hard to ensure that there is consumer participation at all levels of the total federation—from the Board of Directors all the way through the policy and technical activities. Sometimes the participation is by consumers themselves, at other times representation is through a consumer organization. But there is always a need for more consumer involvement in standards and conformity assessment activities.

ANSI's processes give any interested stakeholder the opportunity to engage in the development of a standard or the approval of a compliance program. The Institute's procedures are written to assure that everyone, regardless of ANSI membership status, is able to participate in ANSI activities. If someone is interested in the subject covered by a standard, for example, that individual may participate by applying to become a member of the consensus body or submitting a contribution during public review and comment.

American National Standards (ANS) run the entire spectrum, from the very first ANS on pipe threads to work that is underway today to meet emerging needs in areas ranging from the service sectors to the aging populations and those with disabilities.

Standards are important for everyone because they influence the design, safety, manufacturing and marketing of many products worldwide. Standards are not only developed in response to injuries, hazards or other identified safety risks, but more often in a proactive manner to prevent injuries from known hazards. Some areas that come to mind where voluntary standards have especially made a difference in enhancing consumer safety include:

- the National Electric Code (ANSI/NFPA 70)
- Safety for Ground-Fault Circuit Interrupters (ANSI/UL 943)
- Safety for Gas Water Heaters (ANSI Z21.10.1)
- Safety of Corded Window Covering Products (ANSI/WMCA A100.1)
- Accessible and Usable Buildings and Facilities (ANSI/ICC A117.1)
- Standard Specification for Protective Headgear Used in Bicycling or Roller Skating (ASTM F1447-98—Approved as an American National Standard)

Voluntary consensus standards and conformity assessment programs are driven by requirements for continuous quality improvement—especially as technology changes and evolves. ANSI and its hundreds of accredited standards developers and conformity assessment bodies are constantly reviewing and updating their systems to stay abreast of current and anticipated needs.

ANSI: RESPONDING TO NATIONAL PRIORITIES.

ANSI's actions are aligned with the United States Standards Strategy (USSS), an overarching framework document that calls for close cooperation between those who develop the nation's standards and conformity assessment programs and those who use them. The USSS (excerpted in Annex B of this testimony) calls for the consistent use by government of voluntary consensus standards. It also calls for the standardization community to show leadership in developing responses to emerging national priorities.

ANSI's standards panels are excellent examples of how the Institute is addressing the critical needs of the nation. Last fall, ANSI partnered with the Council of Better Business Bureaus to tackle identity theft prevention and ID management—an issue that has victimized more than 18 million Americans over the past two years.

The Institute has partnered with the 9–11 Commission and the DHS to address homeland security; and with the President's Office of Science and Technology Policy to help lead global nanotechnology initiatives. ANSI is working with HHS to implement the President's vision for every American to have a secure electronic health record within the next ten years. And the Institute's newest panel is working with a broad spectrum of agencies to support the commoditization of viable alternatives to fossil fuels and the diversification of the global energy infrastructure.

ANSI has a unique ability to bring together in a neutral forum representatives of industry, standards developing organizations, trade associations, professional and technical societies, government, labor and consumer groups.

ANSI believes that a strong public-private partnership is essential to renew consumer confidence in the safety of toys.

ANSI: ACTING TO IMPROVE TOY SAFETY

Earlier this year, the Toy Industry Association asked ANSI to help them design a program of testing, inspection and education that could be implemented across the industry's global supply chain.

ANSI responded with a three-point proposal:

First, we would help the toy industry analyze existing standards, technical regulations and conformity assessment programs.

Next, we would form technical working groups and coordinate their efforts to design testing and inspection methodology programs.

Finally, we would recommend steps to improve compliance activities throughout the toy industry's global supply chain.

TIA accepted this proposal and I, along with several ANSI colleagues, began working with the association and its members two months ago.

Almost immediately, we agreed that two criteria were necessary for success in the global marketplace: common product requirements and harmonized test methods.

This means the system must be efficient, consistent and sustainable. It must focus on improving how products are evaluated and assessing who is conducting the evaluations.

ANSI is focusing its facilitation efforts on the development and standardization of compliance procedures that can be used industry-wide and throughout the supply chain. . . in the past, these activities have been defined by individual manufacturers and retailers.

The Institute is also turning its attention to harmonization of the current practices used to evaluate the competence of the conformity assessment bodies that are evaluating compliance to requirements . . . regardless of whether those requirements are defined in a voluntary standard or a Federal regulation.

For both the requirements and the organizations, we are working to harmonize these practices for use industry-wide.

Our solutions will draw from a toolbox of conformity assessment resources. Not just testing and inspection, but also systems auditing, accredited certification programs, and, of course, education and training. These tools are defined in the National Conformity Assessment Principles of the United States, excerpted in Annex C of this testimony.

The program we are developing will be committed to improving product safety, not just reducing the number of recalls. It will be sustainable and forward looking to anticipate and prevent problems yet unknown. It will be considerate of all types of suppliers—regardless of size or location. And it will support the concept of "One standard . . . One test . . . Accepted everywhere."

We are making great progress. Three working groups on Process Control, Testing and Reporting, and Design are meeting on a weekly basis. During bi-weekly teleconferences, they report to a Steering Committee comprised of the WG leaders, and representatives of consumers, the U.S. government, and staff from both ANSI and TIA.

Recommendations from the Working Groups and Steering Committee are targeted for broad review and approval—including a public comment period and a formal review and endorsement by TIA—before year-end.

Implementation is expected to begin in early 2008.

In the meantime, a broad spectrum of stakeholders is already taking decisive action to remove unsafe products from distribution. In particular, brands and retailers have shared with ANSI that they have intensified their conformity assessment efforts to ensure the integrity of the import safety net.

There can be no guarantee unless all the stakeholders are working together. From producer to government regulator to retailer to parent—everyone has a role to play.

BUILDING CONSUMER CONFIDENCE

Just as consumers have the right to expect that the toys they buy for their children will be safe, the same expectation should hold true for the toothpaste they use, the tires they travel on, and the food they eat.

The emergence of the global marketplace has created both consumer benefits and problems. If the public and private sectors work together, practicable solutions can be found to address the emerging issues of consumer health and safety in a global world.

Steps are already being taken. On September 26, ANSI hosted a conference focused on building consumer confidence in the products that enter into our marketplace. Presentations and discussion sessions engaged participants in identifying resources, initiatives, and applicable standards and compliance programs that will create a safer consumer environment.

A follow-up session was held during a joint meeting of the ANSI member forums in mid-October. The Institute is committed to a process that identifies necessary, practicable and immediate actions that can be taken to ensure that only safe products enter into the U.S. marketplace.

ANSI wants to help reassure consumers that the products they find on the shelves of their local retailer have been tested and found to be safe—regardless of country of origin. In order for the Institute to accomplish this objective:

- Standards and conformity assessment resources that are already in place must be used more efficiently.
- Government and industry need to work at a single purpose to identify gaps in the current systems of testing and inspection of products imported to the United States.
- New human and financial resources must be brought to bear to strengthen existing systems and fill any identified gaps.

In some cases, it may be necessary to elevate certain requirements from voluntary to mandatory status. If this happens, the U.S. must also be careful to remain compliant with our obligations in the WTO and existing bi-lateral trade agreements. Any efforts made to improve the safety of imported products should not cause other governments to reciprocate with trade barriers on American exports.

CPSC and the other regulatory bodies that lead oversight and regulation for consumer health and safety issues will not be able to handle the workload alone—even with additional financial resources. Private and public sector resources must be utilized in harmony if consumer confidence in imported goods is to be restored.

ANSI stands ready to coordinate that public/private partnership. The Institute knows how to leverage voluntary consensus standards and the related compliance systems to create solutions that engage and support all stakeholders.

ANSI looks forward to working in partnership with this committee, Congress, and other U.S. public sector representatives to stem the tide of unsafe products imported into our country.

BACKGROUND ON THE U.S. STANDARDIZATION AND CONFORMITY ASSESSMENT SYSTEM AND THE ROLE OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

The U.S. private sector-led, voluntary standardization and conformity assessment system has been in existence for more than 100 years. Highly decentralized, the system is naturally partitioned into industrial sectors that are supported by numerous independent, private sector standards developing organizations (SDOs). Marketplace demand drives the system's activities, with standards and conformity assessment programs typically developed in response to specific concerns and needs expressed by industry, government, and consumers.

Since 1918, this system has been administered and coordinated by the American National Standards Institute (ANSI) with the cooperation of the private sector and the Federal, state and local governments. ANSI does not develop standards or con-

formity assessment programs. Rather, it functions as a central clearinghouse and coordinating body for its member organizations. The Institute is a unique partnership of industry, professional, technical, trade, labor, academic and consumer organizations, as well as government agencies. These members of the ANSI federation actually develop standards and conformity assessment programs, contributing their time and expertise in order to make the system work.

ANSI ensures the integrity of the U.S. standards and conformity assessment system by:

1. Establishing a set of due process-based “essential requirements” that SDOs may follow in order to manage the development of consensus standards and conformity assessment programs in a fair and open manner,
2. Accrediting SDOs who adhere to these requirements,
3. Approving candidate standards from ANSI-accredited SDOs as American National Standards (ANS), and
4. Conducting regular audits of the ANS activities of ANSI-accredited SDOs to ensure ongoing compliance with ANSI’s essential requirements.

1ANSI has accredited hundreds of SDOs across a range of industry sectors. These industries include (but certainly are not limited to) telecommunications, medical devices, heavy equipment, fire protection, information technology, petroleum, banking, and household appliances. There are now approximately 10,000 ANSI-approved ANS that address topics as diverse as dimensions, ratings, terminology and symbols, test methods, interoperability criteria, product specifications, and performance and safety requirements. These standards development efforts serve the public interest and are being applied to new critical areas such as the environment, healthcare, homeland security, and nanotechnology.

The Institute’s approval of a candidate standard or conformity assessment program as an ANS verifies that the principles of openness and due process have been followed and that a consensus of all interested parties has been reached. Due process requires that all proposed ANS be circulated to the public at large for comment, that an attempt be made to resolve all comments, and that there is a right of appeal. In addition, ANSI considers any evidence that a proposed ANS is contrary to the public interest, contains unfair provisions or is unsuitable for national use. This basic formula has been the hallmark of the ANS process for decades, and it has garnered worldwide respect and acceptance.

One of the best indicators of confidence in the U.S. voluntary consensus standardization and conformity assessment system (as exemplified by the ANS process) is Congress’s 1996 passage of the National Technology Transfer and Advancement Act (NTTAA). This law (P.L. 104–113) requires Federal agencies to use voluntary consensus standards and conformity assessment programs for regulatory purposes wherever feasible and to procure equipment and services in accordance with such standards. It also requires agencies to increase their participation in the development process and directs the Commerce Department’s National Institute of Standards and Technology (NIST) to coordinate Federal, state and local voluntary standards and related conformity assessment activities.

ANSI’s success is measured by usage and acceptance. From the government’s perspective, there are two examples of confidence in the ANSI process that are worth citing here:

The first is the Consumer Product Safety Act. This 1972 legislation mandates that if a voluntary standard exists, CPSC may issue a mandatory standard only when the voluntary standards will not eliminate or adequately reduce the risk of injury or death, or it is unlikely that there will be substantial compliance with the voluntary standard.

The second is Congress’ 1996 approval of Public Law 104–113, also known as the National Technology Transfer and Advancement Act (NTTAA). This law requires Federal agencies to increase their reliance upon and participation in the voluntary consensus standards and conformity assessment systems.

ANSI also promotes the international use of U.S. standards and conformity assessment programs. The Institute serves as the U.S. national body representative in two major, non-treaty international standards organizations: the International Organization for Standardization (ISO) and, through the United States National Committee (USNC), the International Electrotechnical Commission (IEC). ANSI and the USNC play a leadership role in ISO and IEC, respectively, on both policy and technical matters.

Part of ANSI’s role as the U.S. member of ISO includes accrediting U.S. Technical Advisory Groups (U.S. TAGs) which develop and transmit, via ANSI, U.S. consensus positions on the activities and ballots of technical committees and subcommittees. Similarly, the USNC approves TAGs for IEC activities. In many instances, vol-

untary standards and conformity assessment programs developed by U.S. SDOs are taken forward, through ANSI or the USNC, where they are approved in whole or in part by the ISO and/or IEC as International Standards. ANSI also encourages the adoption of international standards as national standards where they meet the needs of the user community.

In addition, ANSI advocates U.S. positions in various regional standards organizations and regularly meets with representatives from standards bodies in other nations. Thus, ANSI plays an important role in facilitating the development of global standards and related conformity assessment programs that support global commerce and which prevent regions from using local standards that favor local industries as trade barriers.

Conformity assessment is the term used to describe steps taken by both manufacturers and independent third-parties to determine fulfillment of standards requirements. ANSI's role in the conformity assessment arena includes accreditation of organizations that certify that products and personnel meet recognized standards. The ANSI-American Society for Quality National Accreditation Board (ANAB) serves as the U.S. accreditation body for management systems certification, primarily in areas such as quality (ISO 9000 family of standards) and/or the environment (ISO 14000 family of standards). ANSI also is involved in several international and regional organizations to promote multilateral recognition of conformity assessments across borders to preclude redundant and costly barriers to trade.

In summary, through its various roles and responsibilities, ANSI advances its mission to "enhance both the global competitiveness of U.S. business and the U.S. quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems and safeguarding their integrity."

EXCERPT FROM THE UNITED STATES STANDARDS STRATEGY

Principles. It is well established in the community of nations that standards should meet societal and market needs and should not be developed to act as barriers to trade. In approving the World Trade Organization Technical Barriers to Trade Agreement, WTO members recognized that goal and established globally accepted principles as a framework to promote cooperation and discourage the use of standards as trade barriers. The U.S. standards and conformity assessment system is based on the following set of globally accepted principles for standards development.

- Transparency. Essential information regarding standardization and conformity assessment activities is accessible to all interested parties.
- Openness. Participation is open to all affected interests.
- Impartiality. No one interest dominates the process or is favored over another.
- Effectiveness and relevance. Standards and related conformity assessment programs are relevant and effectively respond to regulatory and market needs, as well as scientific and technological developments.
- Consensus. Decisions are reached through consensus among those affected.
- Performance-based. Standards are performance-based, specifying essential characteristics rather than detailed designs where possible.
- Coherence. The process encourages coherence to avoid overlapping and conflicting standards and conformity assessment programs.
- Due Process. Standards development accords with due process so that all views are considered and appeals are possible.
- Technical Assistance. Assistance is offered to developing countries in the formulation and application of standards and related conformity assessment programs.

In addition, U.S. interests strongly agree that the process should be:

- Flexible, allowing the use of different methodologies to meet the needs of different technology and product sectors;
- Timely, so that purely administrative matters do not slow down the work, but meet market expectations; and
- Balanced among competing interests.

EXCERPT FROM THE NATIONAL CONFORMITY ASSESSMENT PRINCIPLES OF THE UNITED STATES

The National Conformity Assessment Principles for the United States document articulates the principles for U.S. conformity assessment activities that will allow consumers, buyers, sellers, regulators and other interested parties to have confidence in the processes of providing conformity assessment, while avoiding the creation of unnecessary barriers to trade.

Conformity assessment includes sampling and testing, inspection, supplier's declaration of conformity, certification, and management system assessment and registration. It also includes accreditation of the competence of those activities by a third party and recognition (usually by a government agency) of an accreditation program's capability.

While each of these activities is a distinct operation, they are closely interrelated. The choice of the most appropriate assessment processes, as well as the quality with which any one of them is performed, can have a significant effect on the confidence in and reliance that can be placed on the results of the entire conformity assessment.

The definitions included in the National Conformity Assessment Principles document are based on ISO/IEC 17000:2004, Conformity assessment—Vocabulary and general principles. Some variances, noted in italics, occur where the term is not in ISO/IEC 17000 or has another specific meaning in the United States. Definitions are included in this document to preclude confusion and to make it more understandable. In different contexts, the same term can signify different types of activities.

- Accreditation Third party attestation related to a conformity assessment body conveying a formal demonstration of its competence to carry out specific conformity assessment tasks. (These tasks include sampling and testing, inspection, certification and registration.)

- Certification Third party attestation related to products, processes, or persons that conveys assurance that specified requirements have been demonstrated.

- Conformity Assessment Demonstration that specified requirements relating to a product, process, system, person or body are fulfilled. (This may include any activity concerned with determining directly or indirectly that relevant requirements are fulfilled.)

- First, Second and Third Party The first party is generally the person or organization that provides the object, such as the supplier. The second party is usually a person or organization that has a user interest in the product, such as the customer. The third party is a person or body that is recognized as being independent of the person or organization that provides the object, as well as the user or customer of the object.

- Inspection Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements.

- Recognition Procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include accreditation of testing laboratories and inspection, certification and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.

- Registration Third party attestation related to systems that convey assurance that specified requirements have been demonstrated. Such systems include those established for the management of product, process or service quality and environmental performance.

- Sampling. Provision of a sample of the object of conformity assessment according to a procedure.

- Supplier's Declaration. Procedure by which a first party or supplier conveys assurance that the object of conformity fulfills specified requirements.

- Test. Technical operation that consists of the determination of one or more characteristics of a given product, material, equipment, organism, person's qualification, physical phenomenon, process or service according to a specified technical procedure (test method).

- Testing. Determination of one or more characteristics of an object of conformity according to a specified technical procedure (test method). Action of carrying out one or more tests.

- Test Method. Specified technical procedure for performing a test.

Mr. RUSH [presiding]. Mr. Korn.

**STATEMENT OF ALAN KORN, DIRECTOR, PUBLIC POLICY AND
GENERAL COUNSEL, SAFE KIDS WORLDWIDE**

Mr. KORN. Thank you, Mr. Chairman.

Let me say by way of introduction that we have great confidence in this committee. We have seen more attention on consumer prod-

uct safety in the past 5 months—you are making my life very busy—than we did for many, many years before.

And, also, I must say that the staff on both sides—the ones sitting to your left and to your right and behind you—have been really stellar. They are always engaging us to find out what we think and often agreeing with us, a few times disagreeing. But the vast majority we have come to some very good conclusions, and I think many of them are contained in this piece of legislation. I think that should go said.

Also by introduction let me say this, that there are many who feel that the CPSC is a dead agency and that it is failing—and that they are failing to repeatedly serve its important mission. I am not one of those people, Mr. Chairman. The CPSC is full of committed staff who day in and day out—I work with them every single day, every single week—who are completely committed to protecting consumers and children from unreasonable, dangerous products.

The CPSC, however, is an agency withering on the vine. It is not dead, but it is withering, and it is in immediate need of water and fertilizer. We believe your act is a much-needed dose of Miracle-Gro.

Let me, at the risk of my own peril, not read through my testimony but just go through a couple of points.

Number 1, we are particularly pleased that there is a budget increase in this bill. Its present budget in no way allows the agency to do what it needs to do. It is the single-handedly most important reform in this legislation. If you do anything else, get it the fertilizer and water it needs to get the job done. I think we are all in agreement there.

We are also supportive of the fact—it is a nuanced point but important one—that you created a separate authorization for the lab. We have been to that lab. They are embarrassingly poor. I think staff has been there, also. It is time. I think everybody is in agreement with that.

My third point is this extension to 5 commissioners, and I am going to spend a little bit more time on that because I think both the acting chairman and the commissioner expressed some reservation there.

We are glad to see it in the bill. The bill's sponsors feel that the Commission can function more effectively with a full complement of members. We agree. An agency with 5 members makes for a much more vibrant institution and will promote active discussion, compromise and even dissent when necessary, which we think serves the public interest.

We can see that energy and I believe effectiveness in another agency under the subcommittee's jurisdiction, and that is the Federal Trade Commission. Due in large part to its full complement of commissioners and its adequate budget, the FTC on whole effectively serves its mission of protecting consumers from deceptive practices and preserving a competitive marketplace.

Another point, the five-member Commission would allow a president and Congress to expand the diversity of the expertise of the CPSC through the nomination and confirmation process. For example, the CPSC panel could include a commissioner with a legal background, a commissioner with human factors experience, a com-

missioner with knowledge of children and how they interact with products, a commissioner with experience in certain risk areas like drowning and fire and burns, which is the leading causing killer of kids under the CPSC jurisdiction. It is motor vehicle crashes is No. 1. That is NHTSA. Those other two are CPSC and, third, a commissioner with a background in product design and engineering.

I am not so egotistical to say that this is a recommendation to the President or Senate as to a particular candidate for the confirmation process, but your bill does capture the diversification.

I think we can also learn by looking at the NTSB, who each has a member with experience in aviation, boating and railway, collectively making a very diverse expertise in that commission.

I think—I am using your words here—that you believe that the agency is in the minor leagues. This provision in the bill, although not the sole provision that will help, will help move this to the major leagues, I believe. In fact, your staff—both staff—did some great research that I don't think there is another agency in this city that has three commissioners. They all have five. So I think that is an excellent thing. It is something that we should keep in the bill, notwithstanding I detected a bit of apprehension from the agency itself.

My testimony goes into much more detail on several other provisions. I will let you work through those and certainly offer my help to staff as we go forward on the many other technical provisions of the bill that we think are good and a few that we think can be modestly improved.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentleman, and we thank you for your gracious commentary.

[The prepared statement of Mr. Korn follows:]

**WRITTEN STATEMENT OF
ALAN KORN,
DIRECTOR OF PUBLIC POLICY & GENERAL COUNSEL
SAFE KIDS USA
ON
THE CONSUMER PRODUCT SAFETY MODERNIZATION ACT OF 2007**

My name is Alan Korn, and I am the Director of Public Policy and General Counsel for Safe Kids USA, a member country of Safe Kids Worldwide. Safe Kids thanks the House Commerce, Trade and Consumer Protection Subcommittee, and in particular Chairman Rush and Ranking Member Stearns for holding a hearing on the *Consumer Product Safety Modernization Act of 2007* and ways to improve the overall operations of the U.S. Consumer Product Safety Commission (CPSC).

I. History of Safe Kids Worldwide

Safe Kids Worldwide is the first and only international organization dedicated solely to addressing an often under recognized problem: ***More children ages 14 and under in the U.S. are being killed by what people call "accidents" (motor vehicle crashes, fires, drownings and other injuries) than by any other cause.*** Formerly known as the National SAFE KIDS Campaign, Safe Kids Worldwide unites more than 450 coalitions in 16 countries, bringing together health and safety experts, educators, corporations, foundations, policymakers and volunteers to educate and protect families against the dangers of accidental injuries.

Founded in 1987 by the Children's National Medical Center and with support from Johnson & Johnson, Safe Kids Worldwide and its member country, Safe Kids USA, relies on developing injury prevention strategies that work in the real world – conducting public outreach and awareness campaigns, organizing and implementing hands-on grassroots events, and working to make injury prevention a public policy priority.

The ongoing work of Safe Kids coalitions reaching out to local communities with injury prevention messages has contributed to the more than 40 percent decline in the childhood unintentional injury death rate during the past 15 years in the U.S. However, with more children dying from accidental injury than from cancer, heart disease and birth defects, Safe Kids Worldwide and its member countries remain committed to reducing unintentional injury by implementing prevention strategies and increasing public awareness of the problem and its solutions.

II. The Problem: Accidental Childhood Injury

Accidental injuries are a leading cause of death for all Americans, regardless of age, race, gender, or economic status. Annually, an average of 27,100 deaths and over 33.1 million injuries are related to consumer products (although these are not necessarily caused by consumer products). Unfortunately, children make up a large portion of these tragic numbers. Each year, more children ages 14 and under die from unintentional injuries than from all childhood diseases combined. More than 5,300 children ages 0 – 14 die and there are over 6 million injuries serious enough to require medical care due to unintentional injury.

III. The Consumer Product Safety Modernization Act of 2007

In light of the recent news coverage surrounding the CPSC and product recalls, Safe Kids believes this is the perfect opportunity to address children's product safety on a comprehensive basis. Accordingly, Safe Kids applauds Committee Chairman Dingell, Subcommittee Chairman Rush, Committee Ranking Member Barton and Subcommittee Ranking Member Stearns, for sponsoring the *Consumer Product Safety Modernization Act of 2007*. We believe this bill is an excellent legislative framework to not only remedy the CPSC's abysmal budget, but to also rejuvenate this important federal agency that has not been reauthorized since 1990. Safe Kids supports many of the provisions contained in the *Consumer Product Safety Modernization Act of 2007*:

A. Increasing the CPSC's General Budget

Safe Kids is particularly pleased that the *Consumer Product Safety Modernization Act of 2007* would dramatically increase the Agency's current operating budget to a sufficient level in order for it to properly fulfill its mission. The CPSC monitors the safety of over 15,000 types of consumer products, including kitchen appliances, sporting equipment, safety devices, home furnishings and art materials, and is charged with an enormous responsibility to keep families safe from injury and death. The CPSC must regulate consumer products, recall them when necessary, educate the public about safe use and behavior, and stay current on new injury product trends.

Given its historically small budget and large statutory mandate, the CPSC has often been effective over the years, but could do much more with additional resources. The *Consumer Product Safety Modernization Act of 2007* provides those resources by providing \$270 million from FY 2009 to FY 2011 – a dramatic increase over current levels. Safe Kids believes this infusion of funds is single-handedly the most important reform in the legislation and we applaud the bill's sponsors for arming the CPSC with appropriate resources in order for it to properly serve its critical mission. We do note, however, that the House version of a CPSC reform bill includes an authorization of an increase in funds for three years while the Senate companion legislation is an authorization for seven years. Clearly a seven year authorization is preferable in that it provides more funding stability to the Agency and gives it the opportunity to better

strategically plan for the future. Nonetheless, the House bill's infusion of funds is much needed and will certainly help the Agency serve its critical mission.

In addition, salaries for staff represent the largest portion of the CPSC's budget. However, the CPSC has gradually had their staffing levels reduced over the years due to budget constraints. This has resulted in fewer and fewer CPSC staff members to carry out the Agency's increasing responsibilities to keep children and families safe from defective and hazardous products. Not only has the Agency lost personnel over the years, but, significantly, the CPSC has lost key staff members through attrition who had in-depth experience and deep institutional knowledge. This is now the time to re-invest in staffing the Agency so that the CPSC, over time, will have an effective team with historical knowledge that can keep up with the fast-changing consumer product marketplace. Safe Kids recommends that at least a portion of the increase in the Agency's budget be used to augment the staffing levels at the CPSC.

B. Dedicated Funds for Labs

Safe Kids also supports the legislation's separate authorization to upgrade the Agency's dilapidated laboratory. This will ensure that the CPSC can accomplish this important task without having to make any difficult decisions about what should be prioritized in the new budget. In addition, having specific amounts of money authorized for the lab sends the important message that this is, in Congress' view, a priority task for the CPSC.

Safe Kids has consistently advocated for an upgrade to the CPSC's lab facilities. In the past, Safe Kids staff toured the CPSC testing lab located in Gaithersburg, Maryland. The CPSC, among other things, uses this lab to test thousands of consumer products to ensure that they comply with existing voluntary or mandatory standards, or to determine whether or not they pose an unreasonable risk of injury to the American public. Safe Kids staff was impressed by the commitment and expertise of CPSC lab personnel, but was surprised by the poor quality of the lab's conditions. The CPSC, to this day, still attempts to fulfill its mission with less than adequate technical facilities. We believe that the CPSC should have a lab that, at the very least, competes with those found in the private sector and that Congress should provide the funds necessary to upgrade the facility. The *Consumer Product Safety Modernization Act of 2007* does just that by providing \$20 million for the upgrade of this important facility.

C. Increasing the Civil Penalties for Violations

Safe Kids supports the increase in the civil penalty allowed by the *Consumer Product Safety Act* (CPSA), as contained in the *Consumer Product Safety Modernization Act of 2007* and passed by the House of Representatives last month (although we would like to see the amount of the cap increased given the recent cap increase passed by the Senate Commerce Committee). In its present form (under Section 20 of the CPSA), any person who knowingly engages in a prohibited act, as outlined in Section 19, is subject to a civil

penalty not to exceed approximately \$1.8 million. In some cases, and in particular when larger companies are involved, the \$1.8 million cap may not be enough of an economic deterrent to prevent the company from engaging in an unlawful act. For example, a company that has \$50 million worth of product in the marketplace may be willing to incur the civil penalty instead of reporting a defect or injury as required under Section 15 in hopes of avoiding a recall (failing to report any information required by Section 15(b) is a prohibited act under Section 19 and is subject to a civil penalty). Safe Kids has long advocated for an increase in the civil cap to an amount that better represents a deterrent. We support the provision in the *Consumer Product Safety Modernization Act of 2007* that would increase civil fines for all statutes under the CPSC's jurisdiction.

D. Restoring the CPSC to a Five-Member Commission

The *Consumer Product Safety Modernization Act of 2007* contains a provision that triggers an existing Agency authorization by expanding the Commission to five Commissioners, as opposed to the current membership of three Commissioners. The bill's sponsors feel that the Commission can function more effectively with a full complement of members. Safe Kids agrees; an Agency with five members makes for a much more vibrant institution and would promote active discussion, compromise and even dissent when necessary. We can see that energy, and I believe effectiveness, in another Agency under this Subcommittee's jurisdiction – the Federal Trade Commission (FTC). Due in large part to its full complement of Commissioners (and its adequate budget), the FTC, on the whole, effectively serves its mission by protecting consumers from deceptive practices and preserving a competitive marketplace.

A five member Commission would also allow the President and Congress to expand and diversify the expertise of the CPSC through the nomination and confirmation process. For example, the CPSC could be comprised of the following:

- A Commissioner with a legal background;
- A Commissioner with experience in human factors;
- A Commissioner with knowledge about children and how they interact with products;
- A Commissioner with experience in certain risk areas, such as drowning or fires/burns; and
- A Commissioner with a background in product design and engineering.

This is, by no means, a recommendation from Safe Kids as to who should be part of the Commissioner panel, but more illustrative of the opportunities that a five member Commission can present to the overall Agency structure as well as diversification. The diversification of expertise can be seen at the National Transportation Safety Board

whose Board Members have individual, and therefore, collective knowledge in the fields of aviation, railway and boating.

Safe Kids does, however, caution the Subcommittee that expanding the Commission by two members would also result in the need for additional budget resources for staffing, office space and travel. We believe that the budget relief provided in the *Consumer Product Safety Modernization Act of 2007* should be used first to improve overall Agency core functions – such as increasing recall effectiveness, staffing, marketplace policing and conducting enhanced public education initiatives – **not** using funds to augment the number of Commissioners. While we support the expanded Commission, Safe Kids believes that there other more pressing matters that need to be addressed first before doing so. The *Consumer Product Safety Modernization Act of 2007* addresses that concern by authorizing the expansion only at the end of FY 2010 after the CPSC budget reaches \$90 million and presumably after it has improved its critical core functions.

E. Enhancing Product Recall Effectiveness

There are many provisions in the *Consumer Product Safety Modernization Act of 2007* that would enhance the effectiveness of product recalls and improve the strength of the CPSC compliance staff at the recall negotiating table with manufacturers:

1. Elimination of the Unfettered Election of Remedies Provision in Section 15 of the Consumer Product Safety Act

The *Consumer Product Safety Modernization Act of 2007* eliminates the unfettered “election of remedies” provision contained in Section 15 of the CPSA. Safe Kids believes this provision unnecessarily handcuffs the CPSC’s compliance staff when they are negotiating a corrective action plan.

Presently, once the Commission determines that a product distributed in commerce presents a substantial hazard and that remedial action is required to serve the public interest under Section 15 of the CPSA, the CPSC may order the manufacturer of the dangerous product to elect (at the product manufacturer’s discretion) to either:

- Bring the merchandise into conformity with requirements of the applicable consumer product safety rule; or
- Replace the product with a like or equivalent product; or
- Refund the purchase price (less a reasonable allowance for use).

(*Consumer Product Safety Act, Section 15d*)

This discretionary election may not always serve the public interest. For instance, if the CPSC is recalling a \$75 toaster that poses a serious electrocution or fire and burn hazard, the manufacturer, once ordered to remedy, may elect to refund the purchase price less a reasonable allowance for use. The refund on a toaster that has been in the marketplace for five years may have a refund value of \$10. This refund may not be a motivating enough factor to encourage the consumer to remove the dangerous product from their household. In this case, the public may be better served by a different remedy – such as receiving a replacement item that is of similar quality or having the recalled product repaired. Safe Kids believes that CPSC compliance officers should ultimately decide what constitutes an appropriate remedy given the totality of the circumstances. The House bill does just that by allowing the CPSC to “approve” the recall remedy plan tendered by the manufacturer. We, therefore, support the change to Section 15 of the enabling statute in the *Consumer Product Safety Modernization Act of 2007* that empowers the CPSC to police the manufacturer’s elected remedy option.

2. Product Tracking

The *Consumer Product Safety Modernization Act of 2007* also contains a provision that would require manufacturers of children’s products to place distinguishing marks on both the products and packaging that will enable the consumer (and retailer) to easily identify whether or not the item has been recalled. This requirement will make it much easier for consumers to quickly identify if a certain product has been recalled and hopefully return or dispose of the item in a timely fashion. Safe Kids supports this sound policy provision.

Historically, recall rates are quite low and much of the problem can be attributed to consumers not even being aware of the recall itself. Recall ineffectiveness also stems from consumers not being able to *easily* determine whether or not the product in their possession is the recalled one. Safe Kids notes that the bill requires the manufacturer to put the distinguishing marks on both the product itself and its packaging, when feasible. Safe Kids believes that the distinguishing marks – when at all possible – should be permanently stamped on the product itself so that the tracking information is present throughout the lifespan of the item.

In addition, Safe Kids recommends that all recall notices should highlight the distinguishing marks on the product. The simple existence of the marks is not enough – the recall notices need to incorporate color pictures of where the marks are on the products (or its packaging) as well as any graphics to help the consumer/parent/caregiver determine if there is a recalled product in their home. The CPSC recently released “A Consumer’s Guide to the Magnetix Building Set Recall”; this is a great example of the effective use of images, distinguishing marks and other graphic elements to convey safety information.

3. Support for the Danny Keysar Child Product Safety Notification Act (H.R. 1699)

Section 104 of the *Consumer Product Safety Modernization Act of 2007* includes an effective tool (product registration cards) that would help improve customer notification and, therefore, recall success rates. The legislation incorporates the *Danny Keysar Child Product Safety Notification Act* (H.R. 1699), which recently passed the House of Representatives, and would direct the CPSC to require manufacturers of certain children's "durable products" (like cribs, playpens, high chairs and strollers) to provide consumer product registration cards in order to help facilitate the recall process. This bill was recently unanimously approved by the full House Energy and Commerce Committee and Safe Kids applauds the sponsors for including the legislation in the *Consumer Product Safety Modernization Act of 2007*. Registration cards, in some circumstances, can be an important tool to help consumers become aware of potentially dangerous products in their home by allowing the manufacturer of a recalled product to directly notify the purchaser of the product about the recall and the remedial action warranted. We note, however, that the *Danny Keysar Child Product Safety Notification Act* would not require registration cards for all children's products; the requirement would only apply to products inextricably interwoven in a child's daily life. This tailored use of registration cards makes the *Act* very practical and targeted to only those products that, if they contain a design hazard, pose significant exposure to death or injury.

Section 104 also contains an interesting provision that would require the CPSC to examine and assess the effectiveness of any voluntary standard relating to the durable infant and toddler products addressed in the *Danny Keysar Child Product Safety Notification Act*. If they are determined to be effective, then the Agency would be required to convert those voluntary standards into mandatory safety regulations. If not, then the CPSC would improve them by issuing more stringent product safety rules. This provision would not only help ensure that these special products are safe, but also, by converting the voluntary standard to a product safety rule, trigger the third-party testing and certification requirements of Section 102. Safe Kids does, however, caution the Subcommittee that this provision of the bill, especially in light of its short time frame for implementation, could be a serious drain on Agency resources and staff time. The *Danny Keysar Child Product Safety Notification Act* addresses 12 "durable products". This is a significant amount of rulemaking.

4. Authority to Re-Visit a Negotiated Corrective Action Plan

The *Consumer Product Safety Modernization Act of 2007* contains a much needed provision that enables the Agency and in particular, its compliance staff, to revisit an implemented recall corrective action plan that has not been effective. This is a particularly important tool for those recalled products that have a serious hazard

and it can be determined that the recall effectiveness rates are insufficient (i.e., cribs that pose a strangulation or a playpen that unexpectedly collapses). Posed with this scenario, the CPSC can require the manufacturer to more aggressively re-publicize the recall with posters, paid advertising or an additional video news release, among other things.

The *Consumer Product Safety Modernization Act of 2007* also allows the CPSC to revoke completely a negotiated corrective action plan if it determines that a manufacturer or distributor has failed to substantially fulfill its action plan obligations. This is also a provision we support. We do believe, however, that “failing to comply substantially with [manufacturer] obligations under [a recall] action plan” should be considered a prohibited act under Section 19 of the CPSA. This would, in turn, trigger the authority to administer the civil penalties provision. Exposure to civil penalties provides an extra incentive for manufacturers/distributors to aggressively comply with an action plan in the first place.

5. Enhanced Notice Ordered under Section 15(c)

Section 209 improves the Section 15(c) notice by allowing the CPSC, after a hearing and order under Section 15(f), to require a manufacturer, if appropriate, to provide enhanced public notification as part of a mandatory recall of a product determined to be a “substantial product hazard”. Although we believe that the CPSC compliance staff already has this authority once a mandatory recall is ordered, the provision does make it crystal clear that that implementation of a recall could require these notice efforts (website, radio and television notices). We also believe that the specificity provided by Section 209 will assist the CPSC staff in negotiating a voluntary recall by informing the manufacturer that these enhanced notice techniques are available to staff and may be required.

F. Third-Party Testing/Ban on Children’s Products Containing Lead

The *Consumer Product Safety Modernization Act of 2007* would require third-party testing to ensure that children’s products comply with any applicable product safety standards. It would also virtually ban lead in children’s products, children’s jewelry and consumer use paints. Associations, manufacturers, retailers and many consumer groups all agree that these are two concepts whose time has come. Add Safe Kids to this long list.

We also have two concepts to add to the legislation. First, Safe Kids believes that the testing required by Section 102 of the *Consumer Product Safety Modernization Act of 2007* should be done throughout the manufacturing process and on several lots to ensure that all products that may find themselves in the marketplace comply with applicable safety standards.

Second, the Senate's version of the CPSC reform act contains a provision that requires the Government Accountability Office to conduct periodic audits of third-party testing labs. The audit procedure described in the Senate's *CPSC Reform Act of 2007* addresses the expertise and qualifications of third-party testing labs. Safe Kids believes that this audit protocol should be added to the House bill and, in fact, expanded to include a periodic assessment of the financial independence of these facilities. This will ensure that the certification labs are truly and continuously qualified and independent.

G. Labeling Requirement for Catalog and Internet Sales of Toys and Games

Safe Kids supports the provisions of Section 105 that would require manufacturers of certain children's products to label and, therefore, warn potential online/catalog purchasers of the small parts in the product and the associated choking hazard. Present law requires those warnings at the point of purchase on packaging on toys sold at "bricks and mortar" stores. This law gives potential toy buyers important safety information before they actually purchase in order to aid in appropriate, safe product selection. With the advent of internet sales and the expansion of catalog sales, Safe Kids believes that it makes sense to afford those consumers the same protection and education received when toys are purchases at more traditional retail sites.

IV. Conclusion

As product-related injuries still exist and can be prevented, the CPSC is needed now more than ever to protect consumers, families, and children. Safe Kids commends Chairman Rush and Ranking Member Stearns, along with the other sponsors, for their introduction of the *Consumer Product Safety Modernization Act of 2007* and we look forward to working with this Subcommittee on any efforts designed to protect children from product-related hazards.

Mr. RUSH. The Chair now recognizes Mr. McGuire for 5 minutes.

STATEMENT OF JOSEPH MCGUIRE, PRESIDENT, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

Mr. MCGUIRE. Mr. Chairman and members of the subcommittee, thank you for providing me the opportunity to testify on behalf of the National Association of Manufacturers regarding the Consumer Product Safety Modernization Act of 2007.

We support legislation that reauthorizes CPSC and provides it with the resources necessary to carry out its vital mission. The subcommittee is to be commended on its bipartisan efforts to develop a bill.

I am president of the Association of Home Appliance Manufacturers, which represents the manufacturers of major portable and floor care residential appliances and their suppliers. I am pleased to provide the views of NAM and its coalition of manufacturing associations.

CPSC is our most important regulatory relationship and justifiably so because consumer safety is the most critical obligation we have to our customers. We have aggressively supported increased appropriations for the Commission in this Congress. Although we believe that the American marketplace is safer than ever, the perception of a safety problem is troubling to U.S. manufacturers because their economic viability depends on the confidence of the U.S. public and their products.

H.R. 4040 contains a number of provisions our coalition supports, and we applaud you for seeking these improvements. However, we also believe H.R. 4040 contain a few provisions that need modification.

We support the significantly increased authorization for CPSC funding and recommend that it be focused on the Commission's laboratory and its ability to evaluate the increasingly voluminous information reported to the Commission by manufacturers and retailers. We also believe that the number of full-time inspectors, including those at ports, should be significantly increased. We support structural reforms so that the Commission may continue a temporary quorum with two commissioners.

The Toy Industry Association and the Fashion Jewelry Trade Association have strongly advocated national lead standards for toys and children's jewelry based on sound science and with practical limitations in which to work with the subcommittee on this issue.

The toy industry also supports mandatory testing for children's products. They favor the use of accredited laboratories and CPSC authority to recognize laboratory sanctioning programs, but not to micromanage such programs.

We support more rapid dissemination of information to the public. The reality is that the vast majority of delays and responses to Freedom of Information Act requests are due to lack of CPSC resources and technology. We understand the bill sponsors' intent that there may be circumstances where the Section 6(b) disclosures process should be shortened if rapid dissemination of data is required by public health and safety, but we believe that this exception should be carefully drawn.

In order to maintain the present environment of voluntary industry communications with CPSC, we strongly urge the Congress to keep in place the requirement that there be review of company submissions and CPSC documents for accuracy and fairness before disclosure occurs. We agree to strengthening the prohibition on stockpiling provisions.

We also believe that, in most cases, the Commission's power to disseminate information through its press releases and electronic messages to a wide variety of media has proven to be effective. But we appreciate that in certain narrow circumstances it may be necessary to conduct further outreach, particularly in languages other than English. We appreciate, Mr. Chairman, your interest in this particular provision.

Certainly manufacturers, importers, retailers and distributors should provide, upon request from the Commission, any information that they have on others in the supply chain, to the extent such information is known. Dangerous products should not be exported from the United States to foreign countries. However, where foreign countries are protected by different standards, U.S. firms should not be banned from exporting a product that meets those foreign standards.

We also support, with slight modification, the bill's provision in sharing information with Federal, State, local and foreign government agencies.

In addition, the appliance industry supports Federal action to ensure the proper installation of cooking ranges with UL, ANC and building-code-mandated anti-tipping products and equivalent devices. My industry proposes that it be a violation of Federal law for a person to install a range that is not compliant with the UL safety standard.

We believe that, in general, this bill places consumer safety first and properly resources the Commission. We look forward to working with you and the committee on adopting this beneficial and reasonable CPSC reform in this Congress.

I will be glad to answer any of your questions or follow up with requested information. Thank you.

[The prepared statement of Mr. McGuire follows:]

**Testimony of
Joseph M. McGuire
President
Association of Home Appliance Manufacturers**

**On Behalf of
The National Association of Manufacturers**

**Before The
Subcommittee on Commerce, Trade, and Consumer Protection**

House Committee on Energy and Commerce

**Hearing on
The Consumer Product
Safety Modernization Act of 2007
H.R. 4040**

**Tuesday
November 6, 2007**

Mr. Chairman and members of the Subcommittee:

Thank you for providing me the opportunity to testify on behalf of the National Association of Manufacturers ("NAM") regarding H. R. 4040, The Consumer Product Safety Modernization Act of 2007.

We support legislation that reauthorizes CPSC and provides it with the resources and staff necessary to carry out its vital mission. The Subcommittee is to be commended on its bipartisan efforts to develop a bill.

The NAM is the nation's largest industrial trade association, representing large and small manufacturers in every industrial sector and in all 50 states. I am President of the Association of Home Appliance Manufacturers ("AHAM") which represents the producers of major, portable, and floor care residential appliances and their suppliers. AHAM is a member of the NAM, where I have served as Chairman of the Council of Manufacturing Associations, a division of the NAM comprised of more than 200 trade associations. An additional part of our NAM membership is AHAM's participation in the NAM CPSC Coalition which represents most manufacturers of consumer products. The Coalition works closely with retail organizations.

All of the members of the NAM Coalition on CPSC are regulated by the Consumer Product Safety Act and the other federal safety laws administered by the Consumer Product Safety Commission. We work cooperatively with CPSC on policy issues. It is our most important regulatory relationship, and justifiably so, because consumer safety is the most

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critical obligation we have to our customers. The NAM CPSC Coalition is committed to ensuring that the U.S. marketplace provides safe products to American consumers.

We have aggressively supported increased appropriations for the Commission in this Congress, and advocate that these increased dollars be directed to enhancing the CPSC's personnel dedicated to product testing, evaluation and enforcement and to improved technology and facilities. In fact, we may be the only industry group to lobby the appropriation committees for agency funding, none of which will be spent on or granted to our members.

Companies that work with the Commission recognize that it is facing many challenges, is thinly staffed, many veteran employees are retiring, and its information technology systems and laboratory are grossly inadequate. Modern technology makes it possible for a smaller Commission to be more productive than the larger Commission of the 1970s, but 21st Century technology and resources must be put in place.

We also recognize that there is concern about the safety of consumer products sold in the United States marketplace. Although we believe that the American marketplace is safer than ever, the perception of a safety problem is troubling to U.S. manufacturers because their economic viability depends on the confidence of the U.S. public in their products.

American consumers have benefited significantly from the efficiencies achieved by manufacturing many consumer products in China and other countries. But, there are supply chain challenges in China as well as challenges ensuring that foreign governments are performing their legitimate regulatory functions.

Well before the publicity about product recalls this last year, AHAM and other industry groups have worked closely with the CPSC and with the Chinese government and industry to enhance the safety processes in Chinese manufacturing.

We support stepped-up efforts to ensure that Chinese producers throughout the supply chain are meeting the appropriate standards of safety and quality. The Coalition supports expanding U.S.-Sino joint programs and applauds regulatory initiatives such as the recently announced agreements in several product sectors. We believe that these programs are critical to advancing safety and that ongoing funding for international outreach and education is critical to CPSC's mission.

In addition, the Coalition supports a number of general and product-specific legislative measures to increase CPSC's ability to carry out its mission. As I mentioned earlier, this includes increased funding. H. R. 4040 contain a number of provisions our coalition supports and we applaud you for seeking these improvements. However, we also believe H.R. 4040 contains a few provisions that need modification, as discussed below.

When we consider H.R. 4040 and imposing new obligations on industry, particularly imported products, we need to weigh whether we are actually achieving significant enhancements to product safety or whether we are imposing new non-tariff barriers. We

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absolutely agree that imported products should be designed and manufactured just as safely as U.S. products.

We support the significantly increased authorizations for CPSC funding and that it be particularly focused on major improvements in the Commission's laboratory and on the staff's ability to evaluate the increasingly voluminous information reported to the Commission by manufacturers and retailers. We also believe that the number of full-time inspectors, including those at ports, should be significantly increased. We support structural reform so that the Commission may continue a temporary quorum with two Commissioners.

On lead in children's products, including toys and jewelry designed for children, the Toy Industry Association and, separately, the Fashion Jewelry Trade Association have strongly advocated national lead standards for these products. However, limits should be based in sound science. The focus of such limits should be practical. The major potential risk to children is from accessible components of children's products which may be ingested. This is why the CPSC limits lead in paint to 600ppm, jewelry to 600ppm and Illinois limits it in substrates to 600ppm. These levels are, in effect, safe harbor levels below which there is not likely to be leachable lead levels high enough to present substantial hazard. Your bill should direct the CPSC to recognize this distinction, and permit their experts to set appropriate limits relative to the characteristics and uses of the many different products they regulate. We note that the jewelry industry has advocated adopting specific, safety-based standards for lead in jewelry components both before the CPSC and this body. The toy and jewelry industries support the paint standard limit as proposed by the CPSC staff: 90ppm soluble lead, consistent with global standards for such products.

These industries want to continue to work with you on these issues.

The toy industry supports mandatory testing for certain children's products. On certification, they favor use of accredited labs with CPSC authority to recognize credentialing programs but not micromanage them for which it has neither the expertise nor the resources. The toy industry worked with the American National Standards Institute on a program which will reach places beyond U.S. jurisdiction to assure compliant product before it reaches our shores.

With slight modification, the toy and juvenile products industries support Section 103 requiring tracking labels for children's products. There should be recognition that it is not practical for certain small products to contain such information on each tiny component.

With respect to durable infant product registration, those industries understand the concept of encouraging consumers to register products. They would like to see more flexibility to allow companies to creatively register consumer information and use the information for direct contact related to their overall relationship with the customer while perhaps still restricting third party sales to maintain privacy.

The NAM Coalition supports the provision that would allow the CPSC the option not to utilize advance notice of proposed rulemakings if they are not deemed to be helpful. If rulemakings can be accelerated without losing the opportunity for meaningful public input, then the Commission should have that flexibility.

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We support more rapid dissemination of information to the public. The reality is that the vast majority of delays in responses to Freedom of Information Act requests are due to lack of CPSC resources and technology. We understand the bill sponsors' intent that there may be circumstances where the Section 6(b) disclosures process should be foreshortened if rapid dissemination of data is required by public health and safety, but it should be made clear in the language that this for exceptional instances that meet specific criteria. We do not support any other diminution of the protections afforded highly confidential, proprietary information in Section 6(b).

In order to maintain the present environment of voluntary industry communications to CPSC, we strongly urge the Congress to keep in place the requirement that there be review of company submissions and CPSC documents for accuracy and fairness before disclosure occurs.

We agree to strengthening of the prohibition on stock piling provisions. We also believe that in most cases the Commission's power to disseminate information through its press releases to a wide variety of media has proven to be effective. But, we appreciate that in certain narrow circumstances it may be necessary to conduct further outreach, particularly in languages other than English. We appreciate, Mr. Chairman, your interest in this particular provision.

Certainly, manufacturers, importers, retailers and distributors should provide, upon request from the Commission, any information that they have on others in the supply chain to the extent that such information is known. It is proper and realistic for manufacturers, for example, to know who supplied them directly with products and components. And, manufacturers are responsible for ensuring that all products and components meet applicable safety standards. It is unrealistic in some cases, however, to expect firms to know every possible and changing subcontractor or fabricator who is several levels removed from the U.S. firm. We recommend that the legislation be revised accordingly.

Dangerous products should not be exported from the United States to foreign countries. Therefore, we support the concept of the export provision in Section 211. However, where foreign countries are protected by different standards, U.S. firms should not be banned from exporting a product that meets those foreign standards. For example, some U.S. mattress manufacturers make mattresses intended only for export. Those products meet the importing country but not CPSC standards. Congress should not erect its own non-tariff trade barrier for U.S. exporters by requiring explicit approval from an importing country before we are allowed to compete with others around the world. Congress should be encouraging, not discouraging, exports. So, we suggest that CPSC should not ban such exports if the manufacturer shows that the product meets applicable foreign standards. This will maintain the intent of your provision without imposing unnecessary restrictions on U.S. exports.

We support making more explicit a prohibition on sale of recalled products if the seller has actual knowledge that the product has been recalled. Asset forfeiture should be limited to the products involved and rules need to be developed to assure that this provision is not abused.

We also support your provision on sharing of information with federal, state, local and foreign government agencies and appreciate that, in order to protect American intellectual

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property, you have provided that any such agreements may be abrogated if the foreign government agency fails to maintain the confidentiality of this information. This same provision should be extended to state and local governments.

The NAM Coalition supports a number of product-specific proposals which its industry associations and companies have brought forward. Much of this legislation relies on and enhances existing consensus standards and certification programs.

For example, the appliance industry supports federal action to ensure the proper installation of cooking ranges with UL, ANSI and building code mandated anti-tipping products and equivalent devices. Although very infrequent, range tipping accidents can be avoided with the proper installation of these safety devices. Many building codes already require this installation, but we know that there are installers and landlords who often fail to install these devices. In many cases, homeowners resist the installation of the devices. Therefore, my industry proposes that it be a violation of federal law for a person, at least a commercial installer or landlord, to install a range that is not compliant with the UL standard and building code provisions.

We believe that in general this bill places consumer safety first and properly resources the Commission. We look forward to working with you and the Committee on adopting this beneficial and reasonable CPSC reform in this Congress. I would be glad to answer any of your questions or follow up with any requested information.

Mr. RUSH. Thank you.

The Chair now recognizes Ms. Weintraub for 5 minutes.

STATEMENT OF RACHEL WEINTRAUB, DIRECTOR, PRODUCT SAFETY, AND SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA

Ms. WEINTRAUB. Thank you, Chairman Rush and Vice Chairman Schakowsky and Ranking Member Stearns, as well. I am Rachel Weintraub, director of product safety and senior counsel for the Consumer Federation of America. Today I am also testifying on behalf of Consumers Union, Kids in Danger, Public Citizen, U.S. PIRG, and Union of Concerned Scientists.

Thank you for holding this hearing and for all of your hard work on product safety issues.

It is clear to all of us that something has gone terribly wrong with our current safety systems. Your bill, H.R. 4040, the Consumer Product Safety Modernization Act, correctly recognizes that the Consumer Product Safety Commission, the agency responsible for protecting consumers from unsafe and dangerous products in the marketplace, is broken. H.R. 4040 seeks to remedy this critical problem by increasing the agency's resources and legal authority necessary to keep unsafe products out of the marketplace.

We applaud you for addressing many of the key areas in need of reform. We provide several modest tweaks for strengthening several sections of the bill, and we raise additional issues that this bill should address to make the legislation truly comprehensive.

We wish to emphasize the importance we place on six issues: Section 6(b); independent, third-party testing; the ban on lead in children's products; criminal and civil penalties; the need to include whistleblower protections; and language clarifying the reach of CPSC's authority regarding the preemption of State regulatory and common-law claims.

Section 6(b) of the Consumer Product Safety Act is the ultimate secrecy provision. It is unique to the CPSC, and it requires CPSC to give a company an opportunity to comment on a proposed disclosure of information. If the company has concerns, they can object. CPSC must accommodate the company's concerns or inform them that they plan to disclose the information. The company can then sue the Commission, seeking to enjoin them from disclosing this information.

While H.R. 4040 makes positive modifications to the section, it does not remove the ability of the company to institute a court proceeding to enjoin release of the information. The threat of lengthy and resource-intensive litigation could compel CPSC often to maintain the secrecy of or delay the disclosure of important product safety information, and ultimately keeps consumers in the dark.

We also support the creation of a searchable adverse-event database containing consumer complaints and industry reports of safety concerns relating to consumer products.

Second, independent, third-party testing of final products, as well as components, must be required to identify design flaws as well as violations of existing regulations. Section 102 mandatory third-party testing for children's products is a meaningful provision that establishes a clear definition of an independent third party. Section

104 of this bill that will ensure that infant durable products will be tested to what are now mandatory, as well, standards is critical as well.

We also suggest that children's products be defined as those intended for children 12 years old and older, as the ban on lead provision of this bill currently includes. The disparity between these two sections means that hazards not including lead, such as those involving sharp edges, suffocation and thermal hazards, just to name a few, do not have to be tested for in products intended for children between the ages of 7 and 12. We support the provision that requires CPSC to ensure that testing laboratories meet accreditation standards established by the Commission.

Third, banning lead. We support a bright-line ban on the use of lead in children's products to no more than trace amounts, because experts confirm that there is no safe level of lead. Serious, acute and irreversible harm can come to children as a result of exposure to lead, and there is no reason why such a dangerous additive should be used in children's products. A safer alternative almost always exists.

Overall, our groups view section 101 as a positive improvement over the status quo. We applaud the definition of a children's product defined as that for a child 12 and younger and support a bright-line test for children's products.

We have two questions, though. First, we are not clear about the standard the phase-in option of the bill is requiring. We recommend that language clarify that this lead limit shall apply without regard to whether the lead is accessible to children. Second, we are concerned that the alternative test for 90 ppm soluble lead is ambiguous, as we understand there are many measures of solubility which could lead to different results.

Number 4, civil and criminal penalties. We urge that the civil penalties be increased, and we urge that the criminal penalties be modified to take away the ability of manufacturers to first receive a notice of noncompliance from the Commission before they can be held accountable.

Finally, we also support whistleblower protections. We oppose preemption and urge the committee to consider language clarifying this issue.

And we also support the inclusion of addressing the relationship between CPSC regulators and the regulated industry, with new restrictions on industry-paid travel for CPSC officials.

Thank you.

[The prepared statement of Ms. Weintraub follows:]



Consumer Federation of America

Testimony of

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America

Also on Behalf of Consumers Union, Kids in Danger, Public Citizen,
Union of Concerned Scientists, and U.S. Public Interest Research Group

Before the
Subcommittee on Commerce, Trade and Consumer Protection
of the
House Committee on Energy and Commerce

Legislative Hearing of the Consumer Product Safety Modernization Act,
H.R. 4040

2123 Rayburn House Office Building

November 6, 2007

Chairman Rush, Ranking Member Stearns and members of the Subcommittee, I am Rachel Weintraub, Director of Product Safety and Senior Counsel for Consumer Federation of America (CFA), a non-profit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance the consumer interest through advocacy and education. I am testifying on behalf of CFA as well as Consumers Union, Kids in Danger, Public Citizen, U.S. PIRG, and Union of Concerned Scientists. Thank you for holding this hearing and for providing us with the opportunity to speak today.

First, we want to commend you for introducing this legislation to address the growing problem of unsafe and dangerous products that are increasingly ending up in our homes and in the hands of our children. 2007 is turning out to be the year of the recall, with product safety recalls at a record high level of 472. Many of the 20 million recalled products this year have included popular toys that have been found to have dangerous lead levels. As you well know, lead is a toxin that can reduce IQ points when ingested, and winds up causing other serious medical problems in children.

It is clear to all of us that something has gone wrong with our current safety system. Your bill, H.R. 4040, the Consumer Product Safety Modernization Act (CPSMA), correctly recognizes that the Consumer Product Safety Commission (CPSC) – the agency responsible for protecting consumers from unsafe and dangerous products in the marketplace – is broken. H.R. 4040 attempts to remedy this critical problem by increasing the Agency's resources and legal authorities necessary to keep unsafe products out of the marketplace.

The CPSC is charged with protecting the public from hazards associated with at least 15,000 different consumer products. The Agency was created because the marketplace failed to police itself: litigation and various federal laws were not sufficiently preventing death and injuries from unsafe products. CPSC's mission, as set forth in the Consumer Product Safety Act, CPSC's authorizing statute, is to "protect the public against unreasonable risks of injury associated with consumer products."¹ CPSC's statutes give the Commission the authority to set safety standards, require labeling, order recalls, ban products, collect death and injury data, inform the public about consumer product safety, and contribute to the voluntary standards setting process. CPSC was created to be an agency that acts proactively to protect consumers. Unfortunately, the CPSC's ability to be proactive has been thwarted by a shrinking budget, a lack of aggressive leadership within the agency, and statutory provisions that create obstacles to the effective prevention of product risks.

We are grateful that your legislation addresses these issues head-on. In addition to increasing authorization levels so the agency can hire more personnel and work harder to protect consumers from unsafe products, the bill would require testing of children's toys and products by independent labs that are certified to meet safety standards, would make it illegal to sell recalled products, and would limit lead in toys and children's jewelry to low levels.

We see this bill as an important step in the march to strengthen CPSC and improve the agency's ability to protect the public from risks posed by unsafe products. We applaud you for addressing many of the key areas in need of reform, and we provide several modest

¹ Consumer Product Safety Act, 15 U.S.C. 2051, section 2(b)(1).

recommendations for strengthening and improving several sections of the bill. In addition, we raise additional issues that we believe the Committee should address to make the legislation truly comprehensive.

Before proceeding to a detailed explanation of our recommendations, we wish to emphasize the importance we place on four particular issues – Section 6(b), independent third-party testing of children’s toys and products, the need to include whistleblower protections, and language clarifying the reach of CPSC’s authority regarding the preemption of common law claims in any CPSC reform package.

It is imperative that we eliminate the secrecy language of Section 6(b) of the CPSA to enable the CPSC to inform the public about product-related dangers. While H.R. 4040 makes modifications to this section, it does not go far enough in removing the obstacles which prevent the timely release of information about serious hazards relating to children’s and other consumer products. With regard to independent third-party testing, we applaud the strength and clarity of the definition of an independent third party, but urge the Subcommittee to increase the scope of this provision by amending the definition of a children’s product to include those intended for children twelve and under.

Finally, any attempt to reform the CPSC must include protections for people who blow the whistle on wrongdoing and identify product safety hazards. Further, previous actions of the CPSC have necessitated a clarification of the impact of CPSC rules upon common law remedies.

As a framework for discussing some of the most significant provisions of the CPSMA, I will focus on our organizations’ core principles for product safety reform. We applaud the fact this legislation addresses many of these principles. First, I will focus on the issues that this legislation addresses and will include our recommendations for modest tweaks within these sections.

1. Strengthen CPSC

A. Increase Budget

With jurisdiction over many different products, this small agency has a monstrous task. In 1974, when CPSC was created, the agency was appropriated \$34.7 million and 786 full-time employees (FTEs). Now, 33 years later, the agency’s budget has not kept up with inflation, its deteriorating infrastructure, its increasing data collection needs, or the fast-paced changes occurring in consumer product development. The CPSC budget has also not kept pace with the vast increase in the number of consumer products on the market. CPSC’s staff has suffered severe and repeated cuts during the last two decades, falling from a high of 978 employees in 1980 to just 401 for the 2008 fiscal year. This is the fewest number of FTEs in the agency’s 33-year history and represents a loss of almost 60 percent.

The President’s 2008 budget would provide only \$63,250,000 to operate the agency. This represents a reduction of 19 FTEs and a small increase of \$880,000 from the 2007 appropriation. This increase does not provide for inflation, fails to allow CPSC to even maintain its current minimal programming, and will not allow for CPSC to invest in its research, resources and infrastructure.

Because of this historically bleak resource picture, our groups are extremely concerned about the agency's ability to effectively prevent and reduce consumer deaths and injuries from unsafe products. It is for this reason that we support section 201 of H.R. 4040. This section, entitled "Reauthorization of the Commission," sets up an appropriations schedule for CPSC through 2011. It increases budget levels by approximately 15 percent each year, ending in 2011 at \$100 million. We support these gradual increases, as we believe that these increases are the most effective way to strengthen the agency. We have suggested increases of between 10 and 15 percent each year with an end goal of approximately \$140 million because, if you adjusted CPSC's first budget of \$34 million to today's dollars it would result in a budget of approximately \$140 million. We suggest that this authorization be extended an additional two to five years to establish funding levels for a longer period of time, and increased to the suggested \$140 million. We also support the provision that appropriates \$20 million for 2009 through 2011 for CPSC's laboratory.

B. Restore Commission to Five Commissioners

Section 202, "Structure and Quorum," restores the Commission to five members, as was originally required in the Consumer Product Safety Act. We support this provision as we believe that additional members would result in a more robust and dynamic Commission that would strengthen and enhance the work of the Commission, thus better serving the public interest. We are sensitive to the concern that resources not be taken away from much needed product safety work, but we are confident that if the budget for the CPSC is increased as proposed in this bill, the expansion can occur without detracting from other important activities. This provision also includes a temporary quorum provision that would extend the current emergency quorum of two members from the time this bill is passed until 2008. This Subcommittee may wish to extend this emergency quorum to expire only after there is a full complement of Commissioners.

C. Streamline Rulemaking Procedures

The Consumer Product Safety Act, as amended in 1981, requires CPSC to engage in a three-step rulemaking process that is unnecessarily time-consuming. Section 204, "Expedited Rulemaking," makes the Advanced Notice of Proposed Rulemaking (ANPR) process under CPSA voluntary rather than mandatory. We support this provision as it allows the ANPR process when justified, but would also permit expedited rulemaking when necessary. The Subcommittee should consider requiring rulemaking "benchmarks" that require the CPSC to complete the rulemaking process within particular timeframes, or to submit an explanation to Congress as to why these benchmarks cannot be met. Such requirements could expedite the CPSC's glacial rulemaking process, while allowing the agency to exceed recommended benchmarks when justified, as well as provide notice to the public about the time limits for each stage of rulemaking.

D. Increase Full-Time Employees

While this bill reauthorizes the budget for CPSC until 2011, there is no provision directing CPSC to increase its staff or full-time employees (FTEs). We suggest that this bill include a provision that directs the commission to increase FTEs to at least 600 by October 1, 2013. While we support this increase of 200 FTEs, we hope that the Subcommittee will consider increasing staffing levels even faster, given the extraordinary product safety challenges the

nation is facing and the importance of providing CPSC with a benchmark to measure their growth given their potentially increased resources. We also would support a provision prohibiting the burrowing by political appointees into career positions.

2. Disclosure of Product Safety Information to the Public

For many years, CFA and other consumer groups have urged Congress to eliminate section 6(b) of the CPSA. This section of the Act restricts CPSC's ability to communicate safety information to the public. This secrecy provision is unique to the CPSC and it prevents the timely release of information about serious hazards relating to children's and other consumer products. Under this provision, the CPSC is required to give a company an opportunity to comment on a proposed disclosure of information. If the company has concerns about the wording or the substance of the disclosure, they can object. CPSC must accommodate the company's concerns or inform them that they plan to disclose the information over their objections. The company can then sue the Commission seeking to enjoin them from disclosing the information. Thus, this provision creates a time-consuming process between CPSC and the affected company, often serving to delay or deny the release of important consumer safety information.

Two recent examples highlight the anti-consumer impact of this provision. First, on October 22, 2007, CPSC staff announced its results of a special evaluation of consumer lead kits. CPSC staff tested samples of commonly available test kits on a variety of products containing different levels of lead. CPSC found that, "many of the tests performed using the kits did not detect lead when it was there (false negatives); some indicated lead was present when it was not (false positives). Of 104 total test results, more than half (56) were false negatives, and two were false positives. None of the kits consistently detected lead in products if the lead was covered with a non-leaded coating. Based on the study, consumers should not use lead test kits to evaluate consumer products for potential lead hazards."²

However, this study **fails to mention which lead kits the CPSC actually tested**—a critically important piece of information for consumers seeking to evaluate which kits to use or avoid and an example of the absurd limits placed on the agency by Section 6(b). In addition, the study fails to disclose the threshold lead level that was used as the reference point for determining false negative test results. This is critical information for others to assess the technical basis upon which the CPSC drew their conclusions. Contrast that process to that of *Consumer Reports* testing of lead kits. In the magazine's December 2007 edition, it has information about results from its recent testing of five home lead-testing kits and concluded that three of the five kits were useful though limited screening tools for consumers concerned about lead levels in the products in their homes. Importantly, the magazine disclosed the names of all five kits. Such information is vital for parents and families to have. The CPSC does a disservice to consumers when it fails to make this important information available to the public.

Second, and even more troubling, is the CPSC's knowledge of numerous, serious and well documented harms caused by Stand 'n Seal, a spray-on waterproofing sealant for tile grout. According to an October 8, 2007 article in the *New York Times*, after a new ingredient was added

² CPSC Press Release, "CPSC Staff Study: Home Lead Test Kits Unreliable," October 22, 2007, available on the web at <http://www.cpsc.gov/cpscpub/prerel/prhtml08/08038.html>.

to Stand 'n Seal in the spring of 2005, "calls from customers, emergency rooms and doctors started to pour into poison control centers and, initially in smaller numbers, to the Consumer Product Safety Commission's own hot line."³ One child stopping to talk to his father who was using the sealer, suffered damage to 80 percent of the surface area of his lungs.⁴ With complaints mounting, the manufacturer's chief executive told staff answering the companies' consumer hotline not to tell customers that others had reported similar complaints because doing so "may cause unnecessary public concern."⁵ "Nearly three months passed between the time [the manufacturer] first received a report of an illness and the official recall by the Consumer Product Safety Commission, a period during which dozens were sickened."⁶ The CPSC officially recalled the product on August 31, 2005. In the press release, CPSC acknowledged, "88 reports from consumers who have had adverse reactions after using the aerosol product, including 28 confirmed reports of overexposure resulting in respiratory symptoms for which medical attention was sought for coughing, irritation, difficulty breathing, dizziness and disorientation. Thirteen individuals required medical treatment, including overnight hospitalization."⁷ The Commission did not disclose critical safety information to the public and used 6(b) as a shield to maintain the secrecy of these severe health effects. However, even after the official recall, the hazardous product remained on the shelves; the replaced product contained the same hazardous chemicals and many people were severely injured.

Section 205 of H.R. 4040 regarding "Public disclosure of information" does not delete section 6(b), but rather amends it in a number of ways. This provision requires that any industry response to the CPSC in these circumstances be provided within 15 days versus the current 30 day time frame; does not require that CPSC publish information in the Federal Register; expands an exception of this rule to include potential violations of not just specific prohibited acts, but all violations of any CPSC rule; and creates the option for a shorter time frame if the CPSC publishes a finding that the public health and safety require a shorter period of notice. While these changes are positive, this legislation continues to retain the most significant provision depriving the public of important safety information. The bill does not eliminate the ability of a company to institute a court proceeding to enjoin release of the information. The failure to eliminate the threat of a lawsuit is a significant shortcoming of this provision, as it is the threat of lengthy and resource intensive litigation that compels CPSC to maintain the secrecy or delay the disclosure of important product safety information. Our groups would also support a requirement that the CPSC create a searchable adverse event database. This data base should contain consumer complaints and industry reports of safety concerns relating to toys, other children's products as well as other consumer products.

Our groups support the provision set forth in section 203, "Submission of copy of certain documents to Congress." CFA, other consumer groups, and members of Congress have been hindered from having access to CPSC's budget requests to the Office of Management and Budget (OMB). Thus, reinstating Section 27(k) of the CPSA which requires the Commission to

³ Lipton, Eric, "Dangerous Sealer Stayed on Shelves After Recall," New York Times, October 8, 2007.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ CPSC Press Release, "CPSC, Tile Perfect Inc. Announce Recall of Stand 'n Seal Grout Sealer Due to Respiratory Problems," August 10, 2005, available on the web at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05253.html>.

simultaneously submit budget requests and legislative recommendations to both OMB and to Congress will illuminate what budget the Commission actually requests.

3. Ban Lead from Children's Products

Recently, lead has increasingly been found in a variety of children's products, including toys, jewelry, lunch boxes, bibs, cribs and other items. Lead has been found in products made by large manufacturers, as well as in those made by smaller companies. We support a ban on lead in all children's products, which currently does not exist. While lead in the paint and surface coatings used in children's products is limited to 0.06 percent by weight of lead (600 parts per million (ppm), a standard set in the 1970s), there is no mandatory law prohibiting the use of lead in children's jewelry or in other children's products. We support a bright line ban on the use of lead in children's products to no more than trace amounts. This is because experts confirm that there is no safe level of lead exposure. Serious, acute and irreversible harm can come to children as a result of exposure to lead. Finally, there is no justifiable reason why such a dangerous additive should be used in children's products, as safer alternatives almost always exist.

Section 101 of the CPSMA would require that any children's product not in compliance with this rule be considered a banned hazardous substance, whether or not the lead is accessible to a child. Section 101 sets up a three part standard for lead: (1) The bill requires a phase out over time from 600 ppm; to 250 ppm two years after the date of the act; and to 100 ppm four years after the bill is passed, for lead in children's products unless CPSC finds that 100 ppm is not feasible. This provision covers these levels of lead for "any part of the product." (2) Alternatively, instead of the phase out, children's products could have 90 ppm of soluble lead for any part of the product, as determined by the Commission by rule. (3) In addition, the bill also amends the current ban on lead in paint by reducing it from 0.06 percent to 0.009 percent. The scope of the bill includes "children's products" designed or intended primarily for children 12 years of age or younger.

Overall, our groups view this provision as a positive improvement over the status quo. We applaud the definition of a children's product defined as that for a child 12 and younger and support a bright line test for all children's products, however we are unfamiliar with the term "primarily intended for" and are concerned about potential unknown consequences to this new terminology. We would appreciate further clarifications in two other areas as well.

First, we are not clear about what standard the phase-in option of the bill is requiring. We recommend that the language be preceded by the following statement, which is included in S. 2045:

"the prohibition contained in section 2(A) shall apply without regard to whether the lead contained in such children's product is accessible to children."

Second, we are concerned that option 2, the alternative test for 90 ppm soluble lead, is ambiguous. We understand that there are many measures of solubility which may lead to differing results, and are unsure why a CPSC rule here should be required. Accessible or soluble lead may not present itself until a product ages. We fear that this option may allow products with higher levels of lead to remain in children's products. We hope to work with the Subcommittee to clarify some of these ambiguities and base regulations on total lead level.

4. Require Independent Third-Party Testing

To assure that products are safe when they enter the American and global stream-of-commerce, safety must be infused into the earliest stages of the supply chain. For this reason, independent third-party testing of final products, as well as components, must be required. Third-party testing entities must be independent from and have no financial relationship with the manufacturer producing the product. Testing must be conducted to identify design flaws as well as violations of existing regulations, such as those governing the use of lead paint. Components and final products must be tested at numerous stages of production and tests must be conducted randomly throughout the manufacturing process. Products should also be certified that they meet the appropriate standards and should bear a label indicating that they are certified.

Section 102 of H.R. 4040, "Mandatory Third-Party Testing for Certain Children's Products," amends section 14(a) of CPSA and applies to any manufacturer or private labeler of a children's product that is subject to a consumer product safety standard under any Act enforced by the Commission. This would require testing by non-governmental independent third parties qualified to perform tests and would require that certificates be issued certifying conformity to the applicable safety standard. We support this provision. It is a meaningful provision that establishes a clear definition of an "independent third party."

We also very much applaud the inclusion of section 104 of this bill. This provision will ensure that infant durable products will be tested to what are now mandatory as well as voluntary standards through requiring the Commission to promulgate rules that are substantially the same or more stringent than such voluntary standards. We suggest one addition to this provision which would include consultation with an Infant and Toddler Product Review Panel that would review, report to and advise the Commission regarding the existing guidelines for durable infant or toddler products and the promulgation of consumer product safety standards. Membership of the panel should be comprised of representatives of—(A) (i) the juvenile product manufacturers industry; (ii) consumer groups; and (iii) independent child product engineers and experts; and (B) Consumer Product Safety Commission engineers, with representatives of the industry, not exceeding 40 percent of the membership of the Panel.

In addition, we suggest one additional change to this provision. "Children's Products" are defined narrowly, as those designed or intended for use by children "primarily for children six years of age or younger." However, recognized authorities such as the American Academy of Pediatrics have recommended that children's products be defined as those intended for children twelve years-old and younger, as the ban on lead provision in this bill includes. The disparity between these two sections means that other hazards not including lead, such as those involving sharp edges, choking, suffocation, and thermal hazards, to name a few, do not have to be tested for in the case of products intended for children between the ages of 7 and 12. Finally, as we mentioned previously, we are concerned about the implications of the new "designed or intended primarily for" language.

We support the provision in the CPMA that creates a role for CPSC to play in ensuring that testing laboratories meet accreditation standards established by CPSC. The CPSC is limited by its current budget, staff, expertise, and distance from off-shore manufacturing to engage in

product-testing at the earliest stages of the supply chain. However, we believe that a publicly accountable entity should have oversight of these third-party overseers to set consistent and high standards. Ultimately the responsibility falls on the manufacturers and/or importers (many of which are based in the United States) to be more fully engaged in testing and policing the component parts that make up their products, as well as their final products.

5. Hold Manufacturers, Retailers, and Importers Accountable and Responsible

Global and American manufacturers, retailers, and importers need to take responsibility and be held accountable for safety at every stage of the supply chain. As our economy is becoming increasingly global and the supply chain is becoming more complex with transactions becoming more arms-length, our priority must be that safety never falls through the cracks. Safety should never be “lost in translation” or compromised for a better price.

However, global manufacturers have not been able to comply with existing laws and regulations, such as those banning lead in paint up to 0.06 percent of weight. While our groups agree that certain additional authority and strengthening of existing standards is necessary, such as the CPSMA proposals for independent third-party testing and expanding the ban on lead in all children’s products, enforcement mechanisms must also be in place to ensure compliance with these laws.

Currently, limited enforcement mechanisms are in place. Very low caps exist on the amount of civil penalties the CPSC can assess against an entity in **knowing** violation of its statutes. The current civil penalty is capped at \$7,000 for each violation, up to a total of \$1.83 million. A “knowing violation” occurs when the importer, manufacturer, distributor or retailer has actual knowledge or is presumed to have the knowledge a reasonable person would have or should have if the person acted reasonably to determine the truth. Knowing violations often involve a company’s awareness of serious injury or death associated with its product.

Our groups support completely eliminating this cap on the amount of civil penalties that CPSC can assess. We acknowledge that the House passed H.R. 2474 this October, which increased the civil penalties that CPSC can assess to \$10 million; however, we fear that such a modest increase in the cap may not be enough of a deterrent to prevent violations of CPSC’s rules. We do not want any manufacturer to be able to consider civil penalties a part of doing business.

We also suggest improving the criminal penalty section of the CPSA by elimination of one of the more counterintuitive provisions of the Act, which requires “receipt of notice of noncompliance” from the Commission before any person could be fined under the criminal penalty provision. Those who violate the law in a criminal manner should not get a free pass for a first violation. We support the removal of this clause and also support the inclusion of jail time for anyone who knowingly commits a prohibited act as defined by CPSC’s statutes, as well as the removal of the “willfully” standard for those who authorize any prohibited act, and the inclusion of asset forfeiture as a criminal penalty. Criminal violators of CPSC’s regulations must be punished in a meaningful way for criminal behavior, as such behavior compromises the health and safety of our nation. We support this bill’s inclusion of asset forfeiture as a penalty for a criminal violation of CPSC’s statutes in section 214.

6. Recall Effectiveness: Direct-to-Consumer Notification of Recalls

The ability of CPSC to conduct effective recalls of unsafe products is critical to protecting the public from unreasonable risks associated with consumer products. Our groups support requiring that manufacturers (or distributors, retailers, or importers) of products intended for use by children provide with every product a Consumer Safety Registration Card that allows the purchaser to register information through the mail or electronically. Such information should be allowed to be used by a company solely to contact the purchaser in the event of a recall or potential product safety hazard. Product Registration Cards are required to be attached to car seats to provide a mechanism to directly notify consumers who purchased a recalled car seat. These methods would be more effective than the current approach, which relies heavily upon the media to convey the news of the recall and retailers to post notices in their stores.

Consumers who do not hear of product recalls are at greater risk of tragic consequences, including death or injury. By being dependent upon the media and generic forms of notice to broadly communicate notification of recalls to the public, CPSC and the companies involved are missing an opportunity to communicate directly with the most critical population -- those who actually purchased the potentially dangerous product. Consumer Safety Registration Cards or a similar electronic system would provide consumers the opportunity to provide manufacturers their contact information enabling manufacturers to directly notify consumers about a product recall.

To improve recall effectiveness, we support the inclusion of Section 104, which requires manufacturers of infant durable products to provide a means of directly communicating information about recalls to consumers through a registration card, electronically or by other means of technology.

Our groups also support the concept of section 211 of the CPSMA, which allows the Commission to prohibit the export of products if they do not comply with any safety standard, are banned as hazardous, or are the subject of a voluntary recall or other corrective action. We support not merely "allowing" the Commission to prohibit export in these circumstances, but rather we urge the Subcommittee to "require" the Commission to prohibit the export of such products. The export of recalled and hazardous products to other countries should simply be prohibited.

Section 208 of the CPSMA, "Corrective Action Plans," amends section 15(d) of the CPSA and provides that the plan for corrective action should be as prompt as practicable, and that the Commission may approve, reject, amend or revoke previous acceptance of the action plan. We would also support the inclusion of a definition for what type of plan is in the public interest.

7. Traceability

When the product safety net fails and an unsafe product enters the market, it can be difficult to isolate the source of the problem. For example, a problem may have occurred at the manufacturing phase by a subcontractor of a subcontractor. Tracking this down can be incredibly time-consuming and can delay a meaningful corrective action plan. Further, more than

one manufacturer may have used the same subcontractor, so knowing the source of the safety failure is critical to isolating the problem. Thus, products should contain some type of label, mark or number on a product that would directly indicate the source, date and production group.

Section 210 of the CPSMA, "Identification of Manufacturer, Imports, Retailers, and Distributors," requires manufacturers to submit to CPSC any identifying information, such as the retailer or distributor and all subcontractors. This will help CPSC to more readily identify all of the segments of the supply chain. In addition, section 103, "Tracking labels for durable products for children," requires indications on product or packaging that enables a consumer to ascertain the source, date, and cohort. This will be useful for consumers as they attempt to identify whether the product they own may be subject to a recall. Our groups also support that this provision require this information on both the product and the packaging, as packaging materials are often discarded. However, we have questions about qualifying the language with the phrase, "to the extent feasible" and wonder who has the authority to make that determination.

8. Internet and Catalogue Labeling

Our groups support extending the small parts choking hazard warnings required on toy packaging since 1994 to Internet and catalogues advertisements. The 1994 law requires express hazard labels on toys for children between three and six years old that contain small parts banned for sale to children under three due to choking hazards. With more and more purchases being made through e-commerce (one industry estimate predicts Internet toy sales will increase 57% this quarter from the third quarter 2006), and with the point of purchase now including Internet sites and catalogues, it makes sense to upgrade safety rules to reflect the growing number of purchases that are made without the toygiver seeing the actual package that includes the warning. We, therefore, strongly support section 105 of the CPSMA, which updates CPSC's hazard warning requirements by extending this provision to include Internet and catalogue advertisements.

We urge the Subcommittee to include the following provisions to the CPSMA, which are not currently in this legislation.

1. Support Enforcement by State Attorneys General

Our groups also support permitting a State to bring a civil action on behalf of residents to enforce provisions of Acts under CPSC's jurisdiction because state Attorneys General serve an important role in protecting the public. This will be a critical tool that will help buttress the CPSC's limited enforcement capabilities, help consumers to obtain redress for harms they have suffered, and deter wrongful conduct.

2. Oppose Preemption

In February 2006, the Draft Final Rule for Flammability of Mattress Sets ("Draft Final Rule") was made available to the public. Consumer groups opposed this Draft Final Rule not because of its substantive requirements but because of the novel language added to the preamble after the notice and comment periods expired that purported to preempt state common law remedies. Our groups support explicit Congressional clarification of the limited reach of CPSC's authority to prevent the Commission from usurping well established state regulatory authority and common law claims.

3. Support Whistleblower Provisions

Any comprehensive product safety bill should include whistleblower protections. We believe that such protections are critical and that these protections should include private sector employees as well as CPSC staff. By using the freedom to warn, whistleblowers can and do serve the public by preventing avoidable tragedies. Whistleblowers are the best possible resource for early detection or product safety hazards, if they can safely act.

The House has previously acknowledged the value of federal whistleblowers, and the limitations of current law to protect them, when it passed, on March 14, 2007 by a vote of 331 to 94, HR 985, the Whistleblower Protection Enhancement Act. Last August, Congress approved landmark, best practices whistleblower provisions for all ground transportation workers as part of the 9/11 law.

Whistleblower protections, and the inclusion of another provision giving more resources and a stronger mandate to the CPSC Inspector General, will send a strong signal to CPSC managers that agency employees must be free to do their jobs without fear of having their research suppressed or distorted.

4. Study on Racial Disparities

Evidence from the CDC and the American Academy of Pediatrics indicates that minority children are more likely to have fatal accidents, drown, suffocate, or be poisoned than their white counterparts. For example, the fatal unintentional drowning rate for 5 to 14-year-old African Americans was 3.2 times higher than that for whites. The CPSC should be required to study racial disparities in the rates of preventable injuries and deaths related to suffocation, poisoning, and drowning including, but not limited to, those associated with the use of cribs, mattresses and bedding materials, swimming pools and spas, and toys and other products intended for use by children. We have provided staff with suggested language.

5. Bonding

This summer's recall of tires from an overseas importer highlighted a serious problem: some importers may not be able to afford the costs of conducting a recall if safety hazards exist. If a company is benefiting from the sale of its products in the United States, it must be able to prove that they can cover the costs of a recall. All product sellers, including importers, must be required to post a bond or something equivalent to ensure that recalls could be effectively conducted. We support directing the Commission to promulgate a rule to require manufacturers and others involved in the distribution of a consumer product to post a bond (or something similar that is acceptable to the Commission) to cover the costs of a potential "effective recall," holding the product at port, and/or the destruction of the product.

6. Industry Sponsored Travel

Disturbing information about travel by Commissioners paid for by toy industry and other manufacturing interests came to light just last week. The cozy relationship between regulators and the regulated industry should be addressed with new restrictions on industry-paid travel for high-ranking CPSC staff.

Conclusion

On behalf of CFA, Consumers Union, Public Citizen, Kids in Danger, U.S. PIRG and Union of Concerned Scientists, we support the introduction of this legislation as it represents a crucial first step forward in improving and strengthening CPSC's ability to protect the public from harmful products. We urge the Subcommittee to consider the modest tweaks we have discussed as well as the additional provisions we have recommended. We look forward to working with the Subcommittee to further improve this legislation and to ultimately enact the strongest possible legislation into law to reform, reauthorize, and enhance the ability of the CPSC to protect children and others from hazards posed by unsafe products. We look forward to working with you and your staff on achieving this critical goal.

Mr. RUSH. Thank you.

We want to again thank the panel.

The Chair recognizes himself for 5 minutes of questioning. I will begin with Mr. McGuire.

Mr. McGuire, NAM is opposed to eliminating section 6(b)(3) of the act, which allows manufacturers to go to court to exercise a form of prior restraint to prevent a public disclosure of information about their products that the CPSC wants to release.

My question is, doesn't this provision hamper the CPSC's ability to get vital health and safety information to the public? And, ultimately, aren't manufacturers better off if this information gets out quickly to protect the public?

Mr. McGuire. Mr. Chairman, I think the record will show that the vast majority of delays in CPSC getting this type of information out to the public is due to their own resource limitations, both people and technology, to review the voluminous amount of information submitted.

Current law allows manufacturers 30 days to comment on the fairness and the accuracy of the data. CPSC does not have to accept manufacturers' opinions. But if they do not accept their opinions and decide to release the information, manufacturers have the right to sue them to stop that.

This is not in cases where the CPSC determines that the product might be an imminent health hazard. If they determine that, they can release the information without consulting manufacturers, and we have no problem with that. The vast majority of these cases we are talking about, in reality, do not involve cases where you have an imminent health hazard.

And so, the provision in current law is a 30-day notice. I think your bill reduces it to 15 days. We don't really quarrel with that. We just believe that, in fairness, the manufacturers ought to be given the opportunity to comment whether something actually is accurate and is going to help consumers or confuse consumers in cases where it isn't an imminent health hazard.

Mr. RUSH. So you are saying that, where there is a question of health and safety to the American people, that the CPSC have the full authority, right now, as it stands, to go and to issue statements immediately without being sued?

Mr. McGuire. Yes, sir. If it is an imminent health hazard, they have the ability to do that.

Mr. RUSH. Who is to determine whether or not it is an imminent health hazard?

Mr. McGuire. The CPSC.

Mr. RUSH. OK.

Ms. Weintraub, do you want to comment on Mr. McGuire's comments?

Ms. WEINTRAUB. Sure.

First of all, in terms of disclosing information to the public, it is clear that consumers are in the dark. If a consumer wants to do research on any type of consumer product—let us say a stroller, for example—if they go to the CPSC Web site, they are not going to find comparative information, they are not going to find any other consumer recommendations or complaints from consumers. But

they would find information like that on other agencies' Web sites, such as NHTSA or FDA.

Overall, we see section 6(b) as problematic because it creates this dynamic where CPSC needs to go with its tail between its legs to the industry it regulates and ask permission to disclose information that is in the public interest.

While we have urged for the repeal of this section for years, we understand that the argument is on the side of allowing industry to verify such information. So if 6(b) is retained to allow this dynamic to proceed, we still don't understand why it is necessary for the industries to be able to sue the Commission. There are FOIA protections, which also protect the confidentiality, the trademark information of such information. And we have never been persuaded or even heard a public-policy argument for keeping in this provision that allows industries to sue the Commission.

Mr. RUSH. This ability to sue the Commission, it seems to me, that has been the single most important—or single greatest obstacle to CPSC's quickly notifying the public. Do you have any idea about why the CPSC would be afraid to be sued, afraid of litigation?

Ms. WEINTRAUB. Sure. I mean, litigation is expensive and resource-intensive. And with a budget which we all establish today—a budget that is very small and with vast priorities that are growing, the threat of litigation really is a scary prospect for the Commission.

Mr. RUSH. So if we give them more resources, then that should take care of that particular problem; is that right?

Ms. WEINTRAUB. I don't think so. I still don't think that there are any public-policy reasons for retaining the ability of manufacturers and others to sue the Commission. Even with increased resources, it provides a lot of leverage for manufacturers that other agencies don't provide.

Mr. RUSH. Thank you. My time is up.

The Chair recognizes the ranking member, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Let me just continue that line of questioning, but ask Ms. Belliveau.

We have heard testimony that section 6(b) must be repealed in order to improve safety. I guess the question for you is, what are the practical effects of this?

Ms. BELLIVEAU. Hasbro supports section 6(b) currently, and we also support the proposed bill and its reduction of the time frame for release of the information. We support the provision because we do want to preserve the right to verify the accuracy of the information proposing to be released by the CPSC.

We do agree that the information should be readily available to consumers and should be released on a timely basis. However, we do see instances where information that is shared with us is inaccurate or must be corrected or, perhaps, contains proprietary business information.

So we feel that, while the process certainly could be sped up, we would like to preserve the right, again, to verify the accuracy.

Mr. STEARNS. Mr. McGuire, do you have a comment on this?

Mr. MCGUIRE. Well, I would agree with that, sir.

And one of the things that we have been encouraged to do by the Commission for many years is to report information to them even if we are uncertain of its accuracy or validity. So we do that in order to get information to the Commission that they can review and deal with as appropriate.

We are just talking about the ability, if something is proven to be inaccurate or unfair, to point that out.

Mr. STEARNS. OK.

Dr. BEST, you state that you would like to see 40 parts per million or less in all parts of a child's product. Does that include electronic products that use lead to protect a viewer from radiation, such as LCD screens? And how would you propose to deal with this?

Dr. BEST. For one thing, we should consider if there is a substitute. We understand that there are some products that—right now, the only technology we know that is economically feasible is to include lead. And that is where we have a concern, is if the product can be made without lead and the only barrier to eliminating the lead is economics or the cost of the product.

And if that product is a child's product, then there is no reason not to eliminate the lead. When you talk about a cost-benefit equation, there is no way to define the cost of lead poisoning in a child. It is too huge to quantify.

Mr. STEARNS. No, I understand. It is not acceptable, I understand that.

But I note a New York Times story recently reported that a mother had a 17-month-old child who played with a toy that had excessive lead paint. She had the child tested, and the doctor indicated it was an excessive amount. She took the toy away, and she had the child retested, and the level dropped significantly.

Is this typical, that blood lead levels in children can decrease that quickly?

Dr. BEST. It is typical that lead levels do drop over time, even with continued exposure, in some instances. What is hidden in that information, though, is that the damage has already been done.

Mr. STEARNS. For example, it said the national average is now approximately 3 micrograms per deciliter, down from 16 less than 20 years ago. Obviously, you don't want any lead, but it appears that, over the years, it has gone down dramatically. And, in this case, this woman had her child tested after removing the lead toy, and it came down significantly.

Dr. BEST. Just because it came down significantly does not mean that the damage to that child's nervous system was not already done. And, in fact, we know that, by the time you have a measurable level of lead in your blood, which is—

Mr. STEARNS. What is that measurable level of blood?

Dr. BEST. The lowest that a typical instrument can measure is 2 micrograms per deciliter. And below that, we end up dealing with instrument variability.

Mr. STEARNS. The national average is 3, it says here. In my notes, it says 3. So the national average is above what it should be, in your opinion?

Dr. BEST. Absolutely. It should be below measurable levels.

Mr. STEARNS. Right. And the damage that is above 2 is to the nervous system. How can you identify the damage? How is it exhibited?

Dr. BEST. In terms of low levels of lead, it is typically exhibited in decreased IQ. And so they do it on population level samples where they look at children who have been exposed and haven't been exposed and compare the means of the IQ.

Mr. STEARNS. Mr. Chairman, I think my time has expired.

Mr. RUSH. The Chair recognizes now the Vice Chair, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you.

Is it Ms. Belliveau?

Ms. BELLIVEAU. Yes.

Ms. SCHAKOWSKY. You mentioned testing prior to the sale of your products. Is that true of products for which you license your brand?

Ms. BELLIVEAU. Yes, it is true.

Ms. SCHAKOWSKY. A Chicago family lost their son to the Playskool Travel-Lite Crib in 1998, which was made by Kolcraft but carrying your Hasbro brand Playskool. And six children have died in that model crib. Documents reveal that Hasbro did no testing and did not receive any testing reports from Kolcraft and yet let their name go on the product.

What are you doing differently now?

Ms. BELLIVEAU. Vice Chairman Schakowsky, you are correct. Approximately 10 years ago, we did have a situation where we licensed our brand to a play-yard manufacturer, and unfortunately there were deaths associated with that play-yard.

We have made changes since those events, including not only tightening up our internal licensing procedures and requiring testing on all licensed products, as well as having worked with the safety standard setting to address portable play-yards.

Ms. SCHAKOWSKY. So all of your products now that you license out, you do the same testing as those that you don't license out, that are in-house?

Ms. BELLIVEAU. Our licensed products are subject to a testing program and protocol that is appropriate for those products, and Hasbro does require that.

Ms. SCHAKOWSKY. The same as those that are for the ones that you directly manufacture?

Ms. BELLIVEAU. Yes. If it were, for example, a toy, it would be subject to the same toy testing standards that Hasbro subjects its own toys to. If it is a different product, it will be subject to the testing protocols appropriate to that product.

Ms. SCHAKOWSKY. I wanted to ask Ms. Weintraub a question.

We have been very concerned with Simplicity Cribs. And there were, what, a million recalls? And the CPSC decided to approve and Simplicity decided to approve a repair kit that immobilizes the drop side of the crib. So, in other words, the repair kit goes out; it is fairly complicated in how to actually install the repair. But it changes the product itself, so the people who may have a disability and need a drop side in order to reach the child in the crib can't do that, or someone with a bad back or anybody who bought it for that feature.

What do you think about the appropriateness of approving a fix that changes the design of the product, as opposed to what I would like—and I sent a letter to Chairman Nord—a refund for those consumers who want a different product?

Ms. WEINTRAUB. Well, first of all, not only is this ultimate repair filled with flaws, but it took a month, at least a month, between the time that the recall was announced and for the remedy to actually be approved and available. So there are many, many problems associated with this product and this recall.

We agree with you that this product and this company has been subject to numerous recalls, many of which have been repairs as opposed to a recall and refund. And we would very much support a refund as opposed to repair that could be complicated, time-consuming and ultimately change an essential aspect of the product.

Ms. SCHAKOWSKY. I hope we can maybe talk about dealing with this in our legislation.

I wanted to ask Dr. Best—and I know Ms. Weintraub came up with this as well—the issue of the 7 or 6 years old to 12 years old and the importance of including them in the legislation. I wonder if you could talk a little bit more about the hazards for older children.

Dr. BEST. Well, older children, while we think of them as being at less risk than the 2-year-old who might be prone to run out in the street, still have very similar risks in terms of choking. They are a little less likely to choke, but they still put things in their mouths and still swallow coins and still do some of the same behaviors that a younger child will do.

And one of the other aspects of the 6- to 12-year-old age is that those children may have younger siblings, since most families try to group their child-bearing years into a fairly narrow gap. And so, a toy that is designed primarily for a 10-year-old may end up in the hands of the 10-year-old's little sister. And that is one of the big risks. Those are the kinds of children I see in the emergency room. They got ahold of their big brother's toy and had a great time and then ended up with some untoward event.

Ms. SCHAKOWSKY. Thank you very much.

I yield back.

Mr. RUSH. The Chair now recognizes the gentlelady from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

I want to thank Congresswoman Schakowsky for asking the question about the 6 versus 12 years old. Because in Congresswoman DeLauro's and my bill, H.R. 3691, we do have the age 12, and exactly for the reasons you said, Dr. Best. We think that all of the definitions should apply up to age 12. And I will probably be doing some kind of amendment or working with the chairman on the manager's amendment to increase that age in our committee mark.

I also wanted to ask you, Dr. Best, about another issue that Congresswoman DeLauro and I raised in our bill, which is what the lead standards should be per million. In your prepared testimony, you recommended a lead standard of 40 parts per million for all children's products, which is what is in our bill. H.R. 4040 has a

standard of 90 or 100 parts per million. And I am wondering if you can explain to us why 40 parts per million would be preferable.

Dr. BEST. We spent a lot of time thinking about this, because it is an obviously complex issue. And we understand that every time we ratchet down the limit, it costs money for manufacturers and for the testers and for all involved. But what we decided was that the reference level should be what is trace in our environment. We can't get below trace in any of our products.

And so, to look for trace levels, we had to go to the scientific literature. And you had to look not at the United States on the East Coast, because we have actually contaminated our soil so much that it is higher than what we would consider trace. So we found an article that looked at the soil on the top of one of the mountains in Vermont. And they actually—this scientist looked at the levels in the air and in the layer of material that is right at the top of the dirt, you know, with the little pine cone needles—

Ms. DEGETTE. We have those in Colorado too.

Dr. BEST. And then into the lower and lower levels, and then actually at the amount of lead that ended up in the waters, in the water table.

And that is one of the ways we arrived at the 40, is that that was one of the lowest levels that this scientist found.

Ms. DEGETTE. So that determination was actually based on a scientific examination?

Dr. BEST. It was. It was.

Ms. DEGETTE. Mr. Korn, I wanted to ask you, in your testimony you had said that you support increasing the Consumer Product Safety Commission's budget. This, of course, has been an issue for debate in the press and other places with the commissioners of the CPSC about what kind of increase in the budget could be effectively used.

And I am wondering, is there a particular level of funding that you think would be necessary? Putting aside what is in H.R. 4040 or any other legislation, just in general, how much would we be able to increase their budget so that they could actually use that money effectively?

Mr. KORN. Well, we are particularly hypnotized and pleased that it is just more money. This has been an agency that has not had the appropriate funding for so long. So seeing \$10 million, \$15 million increments in a year's time is something that we think is a very good way.

Do I have the expertise to tell you whether or not \$20 million is enough to improve that lab? I don't. To hear that the chairman has said that one of the options is to level the lab completely and start fresh raised with me the possibility that \$20 million may not be enough.

Ms. DEGETTE. And, in fact—and I think Ms. Weintraub pointed this out, too—when the Consumer Product Safety Commission started out in the 1970's, the budget was \$34.7 million. So if you took that, just for adjusting for inflation, it would be \$140 million now.

Mr. KORN. Which is where your bill gets to eventually.

Ms. DEGETTE. Eventually it does.

Ms. Weintraub, what do you think? Would that be sufficient to do the things the Consumer Product Safety Commission needs to do?

Ms. WEINTRAUB. We have been using that as a benchmark. Based upon our conversations with experts, we believe that money can't be thrown at the Commission. We need smart growth. And we believe that about 15 percent increments, which is what this bill actually authorizes, is a smart way to go.

This bill stops at 3 years. We would recommend going to 4 or 7 years, and ultimately at least getting to \$140 million, which would put them on par with where they were at their very first authorization.

Ms. DEGETTE. And then I would think what you would have to do, once you got it on par, is take a look, because the markets have changed so much, we have so many imports coming in from around the world, and say, is that budget going to be sufficient with the reorganization over 3 or 5 years to account for the current market?

Ms. WEINTRAUB. I would agree.

I also agree with Mr. Korn. We are coming from a starving mentality, so the idea of \$140 million is just pretty incredible.

But, yes, I agree that we constantly have to be doing assessments, looking at all of the responsibilities that the Commission has, especially with the changing marketplace and the increased complexity of products, and determine if, indeed, that is adequate.

Ms. DEGETTE. Thank you.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you.

My first question will be to—is it Ms. Belliveau?

Ms. BELLIVEAU. Yes.

Mr. GONZALEZ. In your testimony, you state, "We have also stepped up inspections of all factories manufacturing Hasbro products, both here in the United States as well as overseas."

What percentage of your toys are manufactured domestically, in the United States?

Ms. BELLIVEAU. We have a game and puzzle manufacturing facility located in East Longmeadow, Massachusetts.

Mr. GONZALEZ. But if you had a hundred toys—I just want to get the percentage. I am just assuming that the bulk is overseas?

Ms. BELLIVEAU. The bulk is indeed overseas.

We have a manufacturing facility that we own in Europe, in Waterford, Ireland, that is also a game and puzzle manufacturer. It is actually the largest game and puzzle manufacturer in Europe. It produces——

Mr. GONZALEZ. What country manufacturers the greatest percentage?

Ms. BELLIVEAU. The greatest percentage of our manufacturing is done in southern China.

Mr. GONZALEZ. So what I am getting at is, how do you perform your quality testing? Do you have Hasbro domestic personnel, United States, go to China and review the process there?

Ms. BELLIVEAU. We have a U.S.-based quality assurance and product safety team. We are headquartered in Pawtucket, Rhode

Island. And those are our corporate headquarters, where our QA function is based. We also have headquarters in the United Kingdom.

Mr. GONZALEZ. What about China?

Ms. BELLIVEAU. In China we have operations not only in Hong Kong but also in southern China.

Mr. GONZALEZ. Do you have personnel in the major manufacturing sites themselves?

Ms. BELLIVEAU. Yes, sir. We have an on-the-ground presence in China, where we have engineers, inspectors and product safety experts who are full-time Hasbro employees whose responsibility it is to ensure that our systems are being—

Mr. GONZALEZ. Are these United States-trained United States citizens that obviously are assigned overseas duties, or are these outsourced?

Ms. BELLIVEAU. We have United States citizens who are running our global operations as well as heading up our quality assurance function based in China.

Mr. GONZALEZ. Are the inspectors, the inspectors that are on the ground viewing the process, testing the product, trained in the United States, certified in the United States if that is what is required, but basically are in-house?

Do you know what I am saying? People just contract everything out. I assume that happens with even inspection facilities in personnel.

Now, once that process is taken care of, what do you do with the shipment of toys once they hit the American shores? Do you then conduct another sampling? Every hundred box of toys or something, do you take them out, test them, look at them?

Ms. BELLIVEAU. Products that are produced in China for direct import into the United States are tested in China. We do our own in-house testing, and they are also tested by independent third parties.

Mr. GONZALEZ. All right.

And real quick, Mr. Korn, there are many things in this bill that are actually, well, are not in this bill at the present time, and one of them is going to be Federal preemption of State laws or allowing State attorneys general to enforce Federal law. Do you have any view on that? Because that is still being debated.

Mr. KORN. It is not in my testimony, although it does seem to me to be a concept that is worthy of pursuing, whereby a State has got a product-safety piece of legislation that has been vetted through the State democratic process, whatever that may look like, that ends up stronger than the Federal legislation, that the Federal legislation does not preempt that process. That does make sense to me.

My testimony, we haven't formally had an opinion on it, but it is, my gut tells me, something that this committee could explore.

Mr. GONZALEZ. Thank you.

My last question—I only have a few questions, but I am hoping the chairman will indulge me and allow Mr. McGuire to respond.

In your testimony you state, "We need to weigh whether we are actually achieving significant enhancements to product safety or whether we are imposing new nontariff barriers." and then you

continue and you expand on that: “dangerous products should not be exported from the United States to foreign countries. Therefore, we support the concept of expert provision in Section 211. However, where foreign countries are protected by different standards, U.S. firms should not be banned from exporting a product that meets those foreign standards”—I am assuming standards that don’t really compared to United States standards.

What 211 does—and really, do we have a moral obligation to other countries not to export those products that we wouldn’t want our citizens or our children on this side of the ocean to play with or be exposed to?

211 simply states, “Section 211 permits the CPSC to prohibit the export of consumer products that cannot be sold in the United States. A manufacturer may not export products that are not in conformity with consumer product safety rules or subject to mandatory or voluntary recalls or designated an imminent hazard to public health and safety or designated as a banned or hazardous substance, unless the importing country is first notified.”

So I assume that if we tell the country it is a dangerous product, we wouldn’t sell it over here, that they would simply say, well, that is fine, and——

Mr. RUSH. The gentleman’s time is expired, but we will allow the witness to answer the question.

Mr. MCGUIRE. Well, thank you.

Our views on that provision are that there are some cases where another country that has safety standards may have a different standard than the U.S. In the case of Europe, their flame-retardant standards are much different than ours, yet they are protective.

Our views on the bill are that, while it is proper to inform the Consumer Product Safety Commission that a company wants to export a product to another country that has a standard but maybe different than the U.S., we are concerned about needing to obtain permission from the company where the product is going to be sent, for fear of creating a nontariff trade barrier, where that country, perhaps in consort with its own domestic industry, might want to prevent the importation of the product for nonsafety reasons but business reasons.

So I think that provision needs to be carefully crafted so we are not creating another problem in the area of trade.

We understand your intent with the safety provisions of the bill, and I think having the CPSC notified and given the opportunity to prevent the export would be the provision that would get at safety.

Mr. GONZALEZ. Thank you.

Mr. RUSH. The Chairman now recognizes the chairman of the full committee, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy. And, again, I commend you for the hearing.

Starting with Ms. Weintraub, going across the committee table from her right on down, ladies and gentlemen, in three words or less, how do we fund H.R. 4040’s increased authorization of CPSC? Appropriations, user fees, what?

Ms. WEINTRAUB. Appropriations.

Mr. MCGUIRE. Authorization and appropriations.

Mr. KORN. I agree, Mr. Chairman. In fact, the appropriators have already committed, I believe, to this in part; some of them have.

Mr. HALLENBECK. Congressman, I will have to demur. I am here to talk about the toy safety coordination initiatives, so I——

Mr. DINGELL. All right.

Ma'am?

Dr. BEST. And I also will have to say that is not in the purview of the pediatricians.

Mr. DINGELL. And the last of our panel?

Ms. BELLIVEAU. We would support authorization and appropriation, as well.

Mr. DINGELL. Is there anybody there that will tell me that we have done a good job of getting appropriations to fund CPSC?

As a matter of fact, we have done a very poor job, have we not?

Now, Mr. McGuire you stated that there should be recognition that it is not practical for certain small products to contain tracking labels on each tiny component. However, section 103 of 4040 mandates tracking labels for a product and its packaging only to the extent that it is feasible.

Is this condition, requirement compatible with your statement, yes or no?

Mr. MCGUIRE. Yes.

Mr. DINGELL. Very good.

Now, Mr. McGuire, can you tell us why you maintain that it is unrealistic to expect firms to know every possible and changing subcontractor or fabricator used to produce a consumer product for sale in the United States?

Mr. MCGUIRE. Mr. Chairman, manufacturers are the ones that are responsible for the safety of the product, as are major retailers or any retailer that is importing a product. In a foreign country, even in the United States, there are times when a manufacturer may not know the identity of a sub-subcontractor in the supply chain. They need to have systems in place where they are monitoring and auditing the safety of their suppliers. But it could be an incidence where something has changed.

Mr. DINGELL. Now, we have to understand that that is an essential component of knowing those things if you are anticipating the possibility of a product liability suit, isn't it?

Mr. MCGUIRE. Our position is simply that——

Mr. DINGELL. In other words, if you are a manufacturer and you say, "Well, I am manufacturing this, and if I make a mistake I am going to be sued." so you are going to know who your suppliers are, are you not?

Mr. MCGUIRE. Manufacturers need to know who their suppliers are and, to the best of their ability, try to know that. But there may be instances where someone further down the supply chain who is making a material that was going into a part——

Mr. DINGELL. That should be dealt with by putting in the contract to say that you will notify us in the event of changes in suppliers, isn't that so? That is easily learned in the contract, is it not?

Mr. MCGUIRE. I think if the provision related to an ultimate product manufacturer having actual knowledge, it would be preferable.

Mr. DINGELL. All right. It would be particularly true in the case, say, of a country like China, where we haven't got any idea who manufactures what, where or how or why, and we don't have the vaguest idea of what the controls or protections for consumers might be; isn't that so?

Mr. McGUIRE. Well, Mr. Chairman, I don't think that is necessarily true across the board.

Mr. DINGELL. You are comfortable with all Chinese imports, is that right? And you are here to tell us what a great job they are doing about setting safe foods, drugs, cosmetics, appliance, toys?

Mr. McGUIRE. Well, with respect to appliances, a large percentage of appliances are manufactured in China, and they are all tested by independent labs for safety to meet U.S. safety standards. And it is up to the product manufacturer and the retailer to enforce that, as well as CPSC, in terms of—

Mr. DINGELL. Now, let us go to the next question.

Mr. McGUIRE, you stated you wish the committee to amend section 211 of H.R. 4040, which relates to a recall and nonconforming products to permit U.S. manufacturers to export a product to a foreign country if the manufacturer can show that the product meets the country's safety standards.

What if the country does not have applicable safety standards for certain products?

Mr. McGUIRE. Then I think that would be an exception to that, Mr. Chairman.

Mr. DINGELL. So that would be acted on accordingly. All right.

Now, Mr. McGUIRE, H.R. 4040 keeps all the restrictions, or virtually all the restrictions, on section 6(b) of the Consumer Product Safety Act intact for public disclosure of information related to consumer products, except in the case that such information would be vital to protecting the public health and safety.

Do you feel that this amendment is reasonable?

Mr. McGUIRE. I do, sir.

Mr. DINGELL. Now, Mr. Korn, H.R. 4040 amends section 15 to the Consumer Product Safety Act to permit CPSC to review and to approve a company's plans for mandatory consumer product recalls. In your view, is this a good idea?

Mr. KORN. Absolutely.

Mr. DINGELL. Would you tell us, briefly, why?

Mr. KORN. Right now, under the law, it is the manufacturer can elect a remedy amongst three.

Sometimes there may be toasters in the marketplace and the manufacturer may elect to refund minus an allowance, which for a toaster is about \$5. I don't think that is enough of a motivating factor for an owner of that particular product to move to get the dangerous product that could start a house on fire, just to make up a situation, out of their homes.

Instead, I believe it is important for the CPSC compliance staff to have a check on that election. I think it is OK to have the manufacturer at least proffer what they think is best, but let's give the Consumer Product Safety Commission compliance staff the opportunity to police that selection to make sure the public interest is preserved.

Mr. DINGELL. Thank you.

Now, Mr. Korn, you have indicated your position supports independent, third-party testing throughout the manufacturing process and on several lots. In light of such a testing's potential to protect consumers' health and safety, do you think such a requirement would place an undue financial burden on manufacturers?

Mr. KORN. I don't. I think we have seen in the amount of recalls that have happened, because of lead in particular, the minimal cost for an extra lot testing is very small, de minimis, compared to the cost of recalling iconic brands out of the marketplace.

Mr. DINGELL. Thank you.

Mr. Chairman, I have noticed I have used over my time. I thank you for your courtesy, and I yield back the balance of my time, such that it might be.

Mr. RUSH. The Chair thanks the chairman of the full committee.

I didn't want to exercise the distasteful burden of telling the chairman that his time was up, so I just let him go on and on and on.

And the Chair would now want to inform the committee that the record will remain open for 30 days for any additional questions that you might have for the witnesses.

And we would ask the witnesses, if there are questions submitted to you, would you please respond promptly in writing.

This subcommittee hearing is now adjourned. And we want to thank the witnesses for your time and for your patience, and thank you so much for your participation. Thank you very much.

The meeting stands adjourned.

[Whereupon, at 1:58 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

HENRY A. WAXMAN, CALIFORNIA
 EDWARD J. MARKEY, MASSACHUSETTS
 RICK BOUCHER, VIRGINIA
 EDOLPHUS TOWNS, NEW YORK
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 GREGG A. ROTHCHILD, CHIEF COUNSEL

COMMITTEE CORRESPONDENCE

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives Committee on Energy and Commerce Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
 CHAIRMAN

December 5, 2007

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The Honorable Nancy Nord
 Acting Chairman
 Consumer Product Safety Commission
 4330 East West Highway
 Bethesda, MD 20814

Dear Chairman Nord:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on Tuesday, November 6, 2007, at the hearing entitled "Comprehensive Children's Product Safety and Consumer Product Safety Commission Reform Legislation." We appreciate the time and effort you gave as a witness before the Subcommittee.

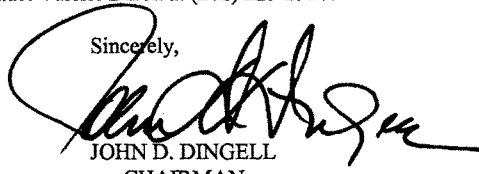
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business Wednesday, December 12, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to 202-226-5577 to the attention of Valerie Baron, Legislative Clerk for the Subcommittee. An electronic version of your response should also be sent by e-mail to Valerie.baron@mail.house.gov in a single Word or WordPerfect formatted document.

The Honorable Nancy Nord
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Valerie Baron at (202) 225-2927.

Sincerely,



JOHN D. DINGELL
CHAIRMAN

Attachment



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Nancy Nord, Acting Chairman

Tel: 301 504-7901

January 23, 2008

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of December 5, 2007, that attached additional questions related to the hearing held by the Subcommittee on Commerce, Trade, and Consumer Protection on November 6, 2007. I have enclosed my response, and please let me know if the Committee has any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Nord".

Nancy Nord

The Honorable Jan Schakowsky

- 1.) How many full time employees at the Consumer Product Safety Commission inspect toys on a full time basis – i.e., their sole responsibility is only to inspect toys, and no other product(s)?
- 2.) If there are full-time or part-time employees who inspect toys on a part-time basis, please provide a list of those employees and the hours in September/October that each spent inspecting toys.

The responsibility for toy inspection, screening and testing at the U.S. Consumer Product Safety Commission (CPSC) is not limited to any single division within the agency. The inspection and testing of toy products is a cross-functional activity, involving personnel from the offices of Laboratory Sciences, Engineering Sciences, Health Sciences, and Compliance and Field Operations. Depending on the agency's workload at any given time, up to 19 technical personnel (e.g., chemists, engineers, physiologists, toxicologists) can be involved in the toy testing process. In addition, up to 60 Field employees routinely do screening tests.

No single CPSC technical employee is restricted to testing only toys but rather all are available, as needed, for safety testing any consumer product under CPSC's jurisdiction for which they are qualified.

CPSC Field staff inspect items for compliance to labeling requirements and screen for lead in children's toys and for compliance to the small parts standard. After these initial inspections and screenings, Field staff sends product samples to the CPSC laboratory for further evaluation.

Once received, samples collected for small parts and sharp edge testing are age-graded by the Human Factors staff. To determine whether a regulation such as the Small Parts Regulation applies to a particular toy, the Human Factors staff must determine the age of the child for whom the toy will be purchased and is most appropriate. These "age determinations" involve matching the characteristics of the toy to the characteristics and abilities of children at various ages and must take into account children's physical, cognitive, emotional, and social development, as well as how the toy is packaged and marketed. The results of this staff work determine the type and severity of tests the toy sample must undergo to identify potential hazards. Two Human Factors staff members conduct the majority of age determinations. As many as five Human Factors staff members are available to perform age determinations during seasonal peak periods or in support of particular initiatives by the Office of Compliance and Field Operations.

Based on Initial age-grading assessments, toy samples are then tested for small parts and sharp edges by CPSC's Laboratory Sciences staff. There are three Laboratory Sciences staff qualified to perform these tests. When testing has been

completed, test data is forwarded to CPSC's Health Sciences staff to further assess risk and other safety issues. There are three Health Sciences physiologists responsible for these tasks.

Samples requiring lead assessment are sent to CPSC's Chemistry Division. There are six Chemistry staff trained and qualified to test painted toy samples for conformance to 16CFR 1303 and Children's Metal Jewelry per 16 CFR1500.230. Lead test data is forwarded to Health Sciences toxicologists to assess risk. There are two toxicologists involved in this risk assessment activity. The Human Factors staff also supports review of the samples being tested for lead.

Many other CPSC technical personnel conduct Product Safety Assessments on specific toys in support of Compliance activities, on an ongoing basis. This may involve analysis and testing that falls outside of specific toy regulation testing in order to identify a particular hazard related to design, manufacturing or even the underlying standard.

With regard to detailed hours spent by CPSC staff specifically on toy testing, the Management Information System used by the CPSC collects and organizes staff hours by program and by project, rather than by product. Programs and projects are approved by the Commission in the agency's annual Operating Plan. None of the agency's specific project categories are restricted to only toy testing; toy testing can be part of a range of programs including those that are mechanical, electrical, and chemical in nature. For example, under the Compliance - Mechanical Hazards Program, the CPSC has a project targeted on mechanical hazards to children. This project includes toys but is not restricted to toys; it also includes such products as cribs, refrigerators and refuse bins.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

November 12, 2007

The Honorable John D. Dingell, Chairman
House Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
House Committee on Energy and Commerce

2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell and Ranking Member Barton:

I would like to elaborate upon my testimony of November 6th as to the advisability of restoring the Commission to its full five-member complement. I have only worked at the Commission when it has had three Commissioners. During that time the Commission's budget and staffing have been so small that it was unthinkable (even if we had the ability) to use our limited resources to fund two additional Commissioners' offices. Part of my hesitation when asked the question stemmed from the fact that regardless of the authorization levels in the bill, we do not know at this point how much money will actually be appropriated for CPSC.

The first priority should be to provide funding for additional staff and laboratory modernization and to also fund any new mandates in the authorization bill as well as those in any other legislation that passes requiring the Commission to take on new responsibilities. I would not want to see funding diverted from these items to fund the additional Commissioners. I assume that is why there is a delay in funding for two additional Commissioners in H.R. 4040. I think the delay is a reasonable and responsible approach and it gives the Commission a chance to fund its priority needs first.


Assuming that funding is not an issue at that time, I do support restoring the two Commissioners. In the twelve and a half years that I have been at the agency, we have lost our quorum on three occasions and it has taken extraordinary action by the Congress to revive it and give us the ability to operate after its most recent lapse. Without that action, it would be going on nearly a year that the Commission would have been without a quorum. Moreover, we will lose the current quorum early next year unless Congress acts again before that time.

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The Commission should not be subject to unpredictable losses of authority because the ultimate losers in such an arrangement are American consumers. With five members, the likelihood of having three Commissioners' seats vacant for more than six months would be extremely unlikely and the loss of quorum problem could disappear.

I also think that, with five Members, the actions of the Commission could actually result from a more deliberative and all-inclusive process. Product safety *should* be **nonpartisan** and I certainly support measures to encourage that type of interaction and stewardship.

Sincerely,



Thomas H. Moore
Commissioner

cc: The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

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